115-137

TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1884.

No. 264.

JOHN S. MAYFIELD, PLAINTIFF IN ERROR,

vs.

MARY E. RICHARDS, A. KEENE RICHARDS, JOHN S. TARVER, LOUISA A. JAMES, ET AL.

IN ERROR TO THE SUPREME COURT OF THE STATE OF LOUISIANA.

FILED SEPTEMBER 15, 1882.

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1 *Petition of J. M. Wells, Jr., Executor.*

No. 40. Probate Court.

Succession of WALTER O. WINN.

Oppositions.

To the honorable the judge of the twelfth judicial district, holding sessions in and for the parish of Rapides and State of Louisiana:

The petition of J. M. Wells, Jr., in his capacity of executor of the succession of Walter O. Winn, respectfully represents:

That he herewith files a provisional account of his administration, which he prays may be duly homologated, after due notice of the filing of said account, and for costs and general relief.

R. J. BOWMAN,
Att'y for Ex'r.

The foregoing petition being considered, it is therefore ordered that due notice of the filing of said account by ten days' public advertisement.

This done and signed, on this 23d day of June, 1880.

2 ARISTIDE BARBIN,
District Judge.

Filed July 5th, 1880. C. L. RANDALL, *D'y Clerk.*

Account.

Provisional account of J. M. Wells, Jr., executor of the succession of Walter O. Winn.

Executor represents that he has received the following amount on account of said succession, as privileges, viz:

From sale of land in the parish of Caddo	2,975 00	
From sale of land in Avoyelles	1,531 68	
		4,506 68
For rent of Cropland for 1877	255 00	
" " " " " 1878	240 00	
" " " " " 1879	180 00	
" Edward Welsh, for rent	20 00	
		695 00
Total amount received		5,201 00

From which executor has paid as special privileges upon said proceeds the following claims:

Upon the land sold in Caddo the following sums:

1. Sheriff commissions	33 93	
2. Advertisement	8 00	
3. Inventory	4 00	
3 4. State and parish taxes from 1872 to 1876, inclusive, $284.62 less $18 discount on parish paper	266 62	

On land in Avoyelles:

5.	Sheriff cost	41 92	
6.	Advertisement	17 50	
7.	State and parish taxes from 1870 to to 1875, inclusive, $459.60 less $24 discount on parish paper	435 63	
8.	Fee of A. B. Irion for annulling tax sale and recovery said land	300	
9.	By amount paid Wise & Herndon	50	
10.	" am't p'd advance cost Wells & Wells	10	
11.	" " " taxes on Cropland	43 75	
12.	" " " clerk	33 75	
13.	" " " "	4 45	
14.	" " " "	29 30	
15.	" " " brief Wells & Wells	16 50	
16.	" " " " for rehearing	18	
17.	" " " " final trial	11	
18.	" " " John Delany, sh'ff	10	
19.	" " " brief suc.	10	
20.	" " " cost S. Court	20	
21.	" " " clerk	5	
22.	" " " "	30	
23.	" " " P. & S. tax, 1877	36 80	
24.	" " " " " 1878	32 94	
	25. " for fencing for Cropland	23 35	
4	26. By am't p'd for nails	2 10	

Executor proposes to pay the following claims as privileges:

27.	Commission of executor on inventoried value of land sold in Caddo & Avoyelles, viz., $2,667.51½	133 35	
28.	Executor's com's's on $695 rents	34 75	
29.	Mrs. Canfield tut'x on judgment for expenses for inventory	125	
30.	R. J. Bowman, att'y's fees	919	
			2,706 65
	By balance		2,494 93

Executor proposes to pay the said balance upon the following ordinary claim, viz:

Nine notes, each for $5,000.00, recognized by a decision of the supreme court and subsequently administered by the executor $45,000

Eight per cent. interest thereon from the 30 March, 1860.

R. G. BOWMAN, *Att'y.*

Filed July 5th, 1880. C. L. RANDALL, *D'y Clerk.*

5 STATE OF LOUISIANA, *Parish of Rapides:*

District Court. No. 40 Probate Docket.

Succession of WALTER O. WINN.

Whereas J. Madison Wells, Jr., executor of the succession of Walter O. Winn, has this day filed his provisional account in said succession, notice is hereby given to all to whom it doth or may concern that the same will be approved and homologated unless opposition is made thereto within the delays prescribed by law.

Given under my hand and the seal of said court, at Alexandria, Louisiana, on this 5th day of July, A. D. 1880.

C. L. RANDALL, *D'y Clerk.*

Succession of WALTER O. WINN.

Opposition of WILLIAM A. GASQUET.

Now comes John S. Mayfield, a creditor of this succession, duly recognized for many thousand dollars, and opposes any recognition of the claim of William A. Gasquet as a creditor of the succes-
6 sion of Walter O. Winn, for the following reasons, viz:

1st. That the claim and judgment of said Gasquet is against Mary E. Winn individually, as expressly set forth by him in suit No. 373, district court docket, and is in no way chargeable against the succession.

2d. Because if he had ever had any valid claim against the succession of Winn, it is long since barred by the prescription of five and ten years, which he now expressly pleads.

Wherefore he prays that said claim be rejected and be not recognized nor placed on the tableau.

R. H. & ROB'T P. HUNTER,
Of Counsel.

Filed Nov'r 10th, 1880. C. L. RANSDELL, *D'y Clerk.*

Succession of WALTER O. WINN.

On Opposition of J. S. TARVER.

In this succession now comes John S. Mayfield, a creditor of same, duly recognized for many thousand dollars, and opposes any
7 recognition of the claim of John S. Tarver, because, if he ever had any valid claim, it is long since barred by the prescription of five and ten years, which he now expressly pleads and prays that the said claim be not recognized, &c.

R. A. & ROB'T P. HUNTER,
Of Counsel.

Filed Nov. 10th, 1880. C. L. RANSDELL, *D'y Clerk.*

District Court, Parish of Rapides.

Succession of WALTER O. WINN.

Opposition of JOHN D. DUBOSE.

Now comes John S. Mayfield, whose claim against the above numbered and entitled succession is placed upon the account filed by the administrator, and recognized as a valid debt due by said estate, and entitled to a *pro rata* proportion of the funds in hand to be distributed to the creditors, which claim is opposed by said J. D. Dubose, pretended creditor, on various grounds, and files the following *preemptory* exceptions to said opposition:

8 1st. That the said opposition is a direct attack upon the validity of the claim of said Mayfield, which he prays may be rejected and set aside, and your petitioner should therefore have been made a party defendant, and cited to show cause why his said claim should not be rejected, which has not been done.

2d., That said claim of your petitioner has been twice opposed by parties claiming to be representatives or creditors of the said estate of Winn upon the plea of prescription, and decided adversely to the contestants. He therefore pleads "*res adjudicata*" against this opposition upon the same issue.

3d. That the pretended judgment of said opponent herein is an absolute nullity, because the executrix of the estate of Winn was not cited to defend the suit No. —, entitled J. D. Dubose *vs.* M. E. Winn, executrix, in which suit his pretended judgment was obtained.

4th. The record contains no evidence that the opponent had ever presented the note sued on to the executrix and demanded a recognition of his claim against said estate before commencing suit thereon as required by law.

9 Petitioner prays that the above and foregoing exceptions be sustained, and the opposition of said J. D. Dubose to petitioner's claim be rejected and dismissed at his costs.

R. A. & R. P. HUNTER,
Attorneys.

Filed Oct. 18th, 1880. C. L. RANSDELL, *D'y Clerk.*

Succession of WALTER O. WINN.

The opposition of John S. Tarver shows the court that he obtained a judgment against Mary E. Winn, the universal legatee and executrix of Walter O. Winn, for $2,669.48, with five per cent. per annum interest thereon from March 1st, 1861, in suit No. 153 of your docket. That said universal legatee never disputed the legality of said judgment, but upon execution issuing thereon injoined the same on the sole ground that a writ of *fieri facias* could not issue against the property

of a succession under administration, which was maintained
10 in suit No. 1345; that no portion of his judgment first above recited has ever been paid, and notwithstanding it remains a valid claim against the succession, the present administrator or

dative executor has omitted to place it upon his tableau of distribution.

Wherefore opponent opposes the homologation of said tableau, and prays that the executor be ordered and decreed to place said judgment upon the tableau for distribution, for all other orders, and for general relief.

MANNING, *Att'y for Opponent.*

Filed Oct. 20th, 1880.

G. O. WATTS, *Clerk.*

Succession of WALTER O. WINN.

The opposition of widow Gasquet, executrix of William A. Gasquet, a resident of New Orleans, shows the court that her testator obtained a judgment against the Succession of W. O. Winn, then represented by Mary E. Winn, as universal legatee and executrix, for $5,000.00, with 8 per cent. from March 30, 1860, with recognition of a mortgage on a plantation in Carroll parish, being suit No. 373 of the docket of your court, no portion of which has been paid, but still remains a valid claim against the succession, notwithstanding which the public administration has omitted to place the same on his tableau of proposed distribution, and has ignored it altogether.

11

Wherefore opponent prays that the administrator or executor of this succession be ordered and decreed to place the above-recited judgment upon his tableau, and approve the homologation or approval of the same until it be done, for all other orders, and for general relief.

MANNING,
Att'y for Opponent.

Filed Oct. 20, 1880.

G. O. WATTS, *Clerk.*

District Court for Rapides Parish.

Succession of WALTER O. WINN.

Now comes John DuBose, a judgment creditor of the said succession, as set forth in his opposition to the account of the public administrator filed herein, and shows the court that John S. Mayfield has filed an answer, or peremptory exceptions, to his petitioner's opposition, and sets forth, as one of the grounds of contest, that the judgment of DuBose is an absolute nullity, and proceeds to set up his reasons therefor. Now, your petitioner shows that this is a direct attack upon a judgment, and not permitted by law to be proceeded with in the manner set forth by said answer or peremptory exceptions, for which reason he now moves the court to strike from said answer, or peremptory exception, that portion setting up said defense, in the third item of said exception.

12

T. C. MANNING,
GUS ANDREWS, JR., *Att'ys.*

Filed Jan'y 7, 1881.

C. L. RANSDELL, *D'y Clerk.*

12th District Court of Rapides Parish.

Succession of WALTER O. WINN.

13 Now comes Mary E. Richards, wife of A. Keen Richards, who joins herein, authorizing and assisting, both of Scott county, Kentucky, and shows the court that she is the universal legatee of Walter O. Winn, and his sole heir. That she was removed from the executorship during her absence from the State, although she left a known agent to manage her affairs, which judgment was illegal, and acts of public administrator J. M. Wells, Jr., who was appointed by the court dative testamentary executor, the right to contest which she expressly reserves, shows that she appears now for the sole purpose of opposing the account filed by said public administrator. She opposes:

1st. All items of cost in the case of Wells *vs.* Wells, as the said litigation never inured to the benefit of the succession and was wholly unnecessary.

2d. She opposes item No. 30 for $919.00, attorney's fees, as being excessive and not inuring to the benefit of the succession.

4th. She opposes the ordinary claim of nine notes for $5,000.00 each, amounting to $45,000.00, which is allowed by the public administrator and which he proposes to pay.

14 Opponent says that the notes are prescribed, and were prescribed at the date they were accepted by the executrix, the date of the acceptance being written on the back of the notes long before they were accepted by the executrix and accepted in error; the prescription of five years she specially pleads as a bar to the said claim; she specially pleads the prescription of ten years to all other judgment claims against said succession, and specially against the property of widow Gasquet and John S. Tarver, who are opponents to said account.

Wherefore opponent prays that her opposition be sustained, and for judgment according to law, and that the public administrator *to* required to furnish an itemized account of attorney's fee, which he proposes to pay to R. J. Bowman.

W. F. BLACKMAN, *Att'y.*

Filed Jan'y 11th, 1881. C. L. Ransdell, d'y clerk.

15 In the 12th Jud'l District Court, Parish Rapides, Louisiana.

Succession of WALTER O. WINN.

Now comes John D. DuBose, a resident of Pointe Coupee, La., and a judgment creditor of the succession of Walter O. Winn, deceased, now open and in process of administration in the said parish of Rapides, for the sum of three thousand dollars, with five per centum per annum interest thereon from January 1st, 1861, subject to a credit of fifteen hundred dollars, paid July 22d, 1863, which is shown by the record No. 1115 of the district court of this parish, entitled John D. Dubose *versus* Walter O. Winn's Executor, and files the this opposition to the account of J. Madison Wells, Jr.,

dative testamentary executor, filed in said succession on July 5th, 1880, for the following reasons, to wit:

1st. Your opponent, being a judgment creditor as aforesaid, is entitled to be paid the amount of his claim, which the said executor refuses to do, and, ignoring the rights of your opponent, has refused or neglected to place his claim upon his said account
16 for payment, but proposes to pay the whole cash balance upon a debt set forth by said account, which is not a valid debt against the said succession.

2d. Your opponent opposes recognition as just and valid claims against said succession, or their payment in part or in full, the claims set forth by the said account in the following language: "Nine notes, each for $5,000.00, recognized by a decision of the Supreme Court and subsequently admitted by the executor, $45,000.00, eight per cent. interest thereon from 30th March, 1860," because the said notes, if they ever existed, have been long since prescribed by the lapse of five years, which prescription opponent specially pleads.

He further shows that said nine notes were all prescribed long before they were pretended to be acknowledged by their executrix, Mrs. Mary E. Winn, and that the acknowledgment was made by her in the city of New Orleans, Louisiana, in January or February, 1866, and not on the 1st day of November, 1865, as it purports.

He further shows that the said nine notes, even if the said
17 acknowledgment was legal and valid (which is specially denied), have again become prescribed, more than ten years having elapsed from the date or the time in fact of the first acknowledgment to the time of the second acknowledgment made by the present executor, J. M. Wells, Jr., on May 9th, 1876.

He further shows that the nine notes have never been acknowledged by the supreme court, as alleged, by said account, as alleged, and that the executor, by placing them thereon for payment, or in any other way recognizing them, until they are judicially established or asserted according to law, is acting in direct violation of a decree of the supreme court of Louisiana, rendered in record No. 7068, on a rule taken by Ryan & White *et als. vs.* Walter O. Winn, succession, said opinion and decree being now on file in this succession and reported in 30 A., 702.

3d. He opposes payment of item No. 4 of said account, State & parish taxes from 1870 to 1875, inclusive, and specially pleads prescription of three years thereto.

4th. He opposes item No. 18 of said account, amount paid
18 John DeLacey, sheriff, and specially pleads prescription of three years thereto.

Wherefore, premises considered, opponent prays that, after due hearing hereof—

1st. He be decreed to be and recognized as a judgment creditor of said succession for the amount herein above alleged and set forth, and that the executor be ordered to pay his claim.

2d. That the item of said account setting forth the aforesaid nine notes for payment be rejected, and that they, the said nine notes, be

not recognized as legal and valid claims against said succession, and their payment, either in part or in full, be refused.

3d. That items 4 and 18 of said account be rejected and disallowed; for all necessary orders and decrees, for costs, and general relief.

JAS. ANDREWS, JR., *Att'y.*

Filed August 2d, 1880. G. O. WATTS, *Clerk.*

Testimony for Administrator.

Succession of WALTER O. WINN.

No. 40. Probate Docket.

19 On trial of opposition to account, filed by public administrator.

Offers publication in "We, The People," in June, 1880, of the advertisement of this account.

R. J. BOWMAN sworn, says:

We, The People, is a newspaper published in the town of Alexandria.

Offers the account & vouchers filed.

R. H. HUNTER sworn, says:

I have voucher No. 30 before me. The item of $100.00, charged for professional services in the suit of J. M. Wells, administrator, *vs.* Caroline Bymner, I consider a very moderate fee. The next item is one for professional services in the suit of J. M. Wells, Jr., *vs.* Fannie & Ida F. Wells, $250. That was an action to set aside a rule made by Mrs. Winn individually to the property belonging to succession of Walter O. Winn. I consider it a fair fee. The charge there of $200.00, for defending a rule to sell property in the case of Ryan & White *vs.* The Succession of Winn, I consider a mod-
20 erate fee. The suit was decided in favor of the succession by the supreme court.

The next is a fee in the suit of Ryan & White *vs.* The Succession of Winn, now pending, for $100.00. I consider that a moderate fee.

The charge of $25.00 for petition and attention to sale of land in the parish of Avoyelles, and the same charge for sale of land in the parish of Caddo, I do not consider excessive.

The charge of $150.00 for homologation [of] this account is a moderate fee.

Mary E. Winn, opponent, offers in evidence judgment of supreme court in suit of J. M. Wells, Jr., *vs.* Fannie M. & Ida F. Wells.

Administrator offers in rebuttal the whole record in suit of J. M. Wells, Jr., administrator, *vs.* F. M. & Ida F. Wells.

Administrator offers voucher No. 25.

R. J. BOWMAN says:

It was for lumber for fencing Cropland, the place which yielded this rents.

Also, the item 26 was for nails for putting up the fencing.

21 Administrator offers the nine notes for $45,000.00, with the acknowledgment of the executrix, Mrs. Winn, upon them. (Leave granted Mayfield to withdraw the original by leaving certified copies.)

Testimony on the opposition of widow Gasquet and John S. Tarver.

Admitted that widow Gasquet is executrix of William A. Gasquet.

Offers judgment in suit No. 373, entitled W. A. Gasquet *vs.* Winn, and mortgage on file therein.

Judgment in suit No. 153, entitled J. S. Tarver *vs.* Winn.

Offers tableau of debts filed in the Winn succession, April 19th, 1869.

Testimony of DuBose.

Offers in evidence the judgment of John D. Dubose *vs.* Walter O. Winn, executrix, No. 1115, district court.

Offers the testimony of Mary E. Richards, taken out of court, with the clerk's certificate thereto.

JUDGE M. RYAN, sworn, says:

I am a resident of this parish, and practicing lawyer; was attorney for Mr. Winn, and wrote his will; I am lawyer for the

22 estate until the distribution of the executrix; when she went out I went out. Mrs. Winn came back here from Texas about Christmas, 1865; she then went to New Orleans. I went to New Orleans 1st January, 1866, and Mrs. Winn had been there three or four days when I got there. I know the notes were presented to Mrs. Winn during that visit; I mean they were presented for acknowledgment.

The nine notes are now shown to the witness, and he says:

I recognize these notes as the same notes presented to me as judge of the 9th judicial district, at my plantation on Red river, about the 8th or 9th of November, 1865. These notes were brought to me by a lawyer from New Orleans; they were presented to me as the lawyer of the estate; he came to have them acknowledged; Mrs. Winn was not in the parish at this date, 9th of November, 1865. These notes had written upon them the form of acknowledgement, but there was no signature. I am unable from these circumstances to state that these acknowledgments were not signed by Mrs.

23 Winn on the day they purport to have been signed. Mrs. Winn always lived in this parish until she went to Texas; she went to Texas as a refugee.

X-examined:

I was acquainted with Shephard Brown, member of the firm of Rothfort Brown & Co., of New Orleans; their domicil was in the city of New Orleans, and they were carrying on their business at the time the city was captured.

United States had no jurisdiction over the parish of Rapides during the war, except a military one; there were no courts here during the war, except the Confederate courts.

The Gasquet note is one of the same series of notes, and has the same acknowledgment of Mrs. Winn, as executrix of the same date, as the other nine notes on file.

I don't think Mrs. Winn was in this parish on May 8th, 1866; I think she was in Carrol; she has never resisted in this parish since the war.

I had no special authority from Mrs. Winn, written or
24 other, to accept service for her in the Gasquet suit, No. 373;
I had only general power, as her lawyer, attending to her business. I had no authority, except general authority as a lawyer, for accepting service in this suit, No. 1115, entitled John D. Dubose *vs.* Succession Winn.

Cross-examined by counsel for Mary E. Winn:

The clerk's office was open during the war; there was a clerk and sheriff all during the war. The court-house of this parish was burned in May, 1864; immediately after the burning of the court-house, papers were filed with the clerk; courts were regularly opened in this parish after the war; I was appointed judge, and qualified on the 9th of July, 1865; there was a clerk and sheriff; I think there was no time during the war that a suit could not have been brought in the parish, except when the enemy were in possession of the parish.

Cross-examined by Administrator:

The Federal troops came here the first time in May, 1863; they remained but a short time; then they came again on the 17th
25 March, 1864, and remained till about the 15th May; after they burnt the town they were two or three days getting out of the parish; there was a state of disorganization here at that time, before they came and after they went away; there was no court nor officers after the burning of the court-house until after I was appointed judge; there were no lawyers here at that time; no personal service would have been made upon Mrs. Winn from the time the court-house was burned until the cause came back here in December, and then she did not remain here.

Testimony of Mary E. Winn, opponent:

Judge RYAN says:

Mrs. Winn was universal legatee of Walter O. Winn, under the will and executrix, (offers the testimony of Judge Ryan taken on opposition of Du Bose and Gasquet.)

Testimony of John S. Mayfield:

Offers the nine notes with the endorsements thereon already offered. The petition of order and citation to Mary E. Winn of John S. Mayfield of date May 9th, 1870.

26 Offers judgment of supreme court in the succession of Winn, No. 1659, supreme court.

Offers the petition of Mayfield to destitute Mrs. Winn and the judgment thereon appointing J. M. Wells, Jr., public administrator to take possession of the estate.

Offers the whole record in suit No. 1115, Dubose *vs.* Winn, and particularly the acceptance of service at the foot of the petition, signed M. Ryan, attorney.

Offers the whole record in suit No. 373, Gasquet *vs.* Winn.

Offers the whole record in suit No. 153, Tarrer *vs.* Winn.

Reference is made to supreme court judgment 7068.

R. H. HUNTER sworn, says:

The firm of Rockfort, Brown & Co. was domiciliated in the city of New Orleans, and was doing business there when the city was captured by the United States army. I saw Mr. Shepherd Brown, one of the members, in the city in 1864, when I was a prisoner of war there. The plaintiff Mayfield became the owner of these notes in the early part of 1866. I learned this from Mr. Brown.

27 Mr. Mayfield was a resident of New Orleans.

Offered by executor:

The petition, order, and citation of Mayfield on Mary E. Winn, of date May 9th, 1870.

Offers.—The suit of Mayfield to destitute Mrs. Winn and the judgment thereon. It is admitted that the United States troops took possession of the city in May, 1862, and held it until the close of the war.

Testimony closed.

Attest: C. L. RANSDELL, *D'y Clerk.*

To the honorable the judge of the ninth judicial district court, holding sessions in and for the parish of Rapides and State of Louisiana:

The petition of J. M. Wells, Jr., in his capacity of dative testamentary executor of the succession of Walter O. Winn, respectfully represents the said succession is the owner of the undivided fourth of the plantation in said parish known as the Lodi plantation, and described as follows, viz: Bounded east and south by Prescott, west by Isles Sasser, Boyce & Clarke & R. C Hynson,

28 north by Osborn, Winn & Thos. C. Maddox, and containing about thirty eight hundred acres, more or less, being the same property formerly owned by Mrs. Overton, the grandmother of the said Walter O. Winn.

Petitioner further represente that on or about the year 1862 or '3 Mary E. Winn, now Richards, the executrix of said Walter O. Winn, sold the interest of said succession in the said Lodi plantation at private sale to Emmonds & Jefferson Wells for about twenty thousand dollars in Confederate money, and the said Emmonds and Jefferson Wells, on or about 14 Jan'y, 1874, made a dative ex. payment of the said interest, viz: an undivided fourth of said Lodi plantation to

their respective wives, viz., Emmonds Wells to his wife, Fannie M. Wells, and Jefferson Wells to his wife, Ida F. Wells, and that the said undivided fourth of the said Lodi plantation is now claimed by the said Ida and the said Fanny Wells, who are co-heirs of said plantation with the said Walter O. Winn.

Petitioner further represents that the said sale of the said
29 executrix of the said undivided interest of the said Walter O. Winn in said Lodi plantation, was an absolute nullity, the said executrix being without authority to alienate the property of said succession, such a sale being virtually the sale of the property of another, and was not a title translative of property.

Wherefore the petitioner prays that the said Fannie M. Wells and her husband Evremond Wells, and Ida F. Wells and her husband, Jefferson Wells, may be duly cited to appear before your Hon. court to answer this petition, and, after due proceedings, that the pretended sale of the said undivided interest of the succession of Walter O. Winn in the said Lodi plantation, by the said executrix to the said Evremond and Jefferson Wells, be declared an absolute nullity, and that petitioner, in his said capacity of native testamentary executrix, be deemed to be the owner of the undivided fourth of the said Lodi plantation; that the said Fannie M. and Ida F. Wells be decreed to pay petitioner five hundred dollars per annum for
30 his portion of the rent of the said Lodi plantation from the first January, 1874, and for cost of suit and for general relief.

R. J. BOWMAN & R. A. HUNTER,
At'y for Pl'ff.

Filed April 18th, 1876.

CHAS. MOORE, Jr.,
D'y Clerk.

Citation.

STATE OF LOUISIANA, *Parish of Rapides.*

District Court.

J. M. WELLS, JR., Executor, *vs.* F. M. AND IDA WELLS & *al.* } No. 2159.

To Ida Wells and husband, Jefferson Wells, of the parish of Rapides:

You are hereby cited to appear in the office of the clerk of the said court, in the town of Alexandria, in the parish aforesaid, and comply with the demand contained in the petition as above, of which a copy accompanies the citation, or deliver your answer thereto in writing in said office in ten (10) days after the service hereof,
31 with one additional day for every ten miles between your residence and the office of said clerk.

Witness the Honorable J. Osborn, judge of said court, this 19th day of April, 1876.

CH'S MOORE, Jr., *D'y Clerk.*

The above citation, with a certified copy thereof and of petition, were received by the sheriff of the parish of Rapides, the 19th day of April, A. D. 1876.

JOHN M. BARRETT, *D'y Sheriff.*

Sheriff's Return.—Service at Domicile.

On the 19th day of April, A. D. 1876, I made service of the copies of petition and citation above mentioned on Mrs. Ida F. Wells, at the usual place of domicile or residence of said Mrs. Ida F. Wells, situated in the parish of Rapides, about 6 miles from the court-house of said parish, by delivering them to a person apparently above the age of fourteen years, whose name [was] Jefferson Wells, and who was at the time living in the house of the said Ida F. Wells,
32 —— being absent.

D. C. RAUL, *Sheriff.*

District Court, Parish of Rapides, La.

Returned and filed this 22d April, 1876.

CHAS. MOORE, Jr., *D'y Clerk.*

Citation.

STATE OF LOUISIANA, *Parish of Rapides:*

District Court.

J. M. WELLS, Jr., Executor,
vs.
F. M. & IDA WELLS *et al.* } No. 2159.

To Fannie M. Wells and husband, Evremond Wells, of the parish of Rapides:

You are hereby cited to appear in the office of the clerk of the said court, in the town of Alexandria, in the parish aforesaid, and comply with the demand contained in the petition as above, of which a copy accompanies the citation, or deliver your answer thereto in writing, in said office, in ten (10) days after the service hereof, with one additional day for every ten miles between your residence and the office of said clerk.

33 Witness the Honorable J. Osborne, judge of said court, this 19th day of April, 1876.

CHAS. MOORE, Jr., *D'y Clerk.*

The above citation, with a certified copy thereof, and of petition, were received by the sheriff of the parish of Rapides, the 19th day of April A. D. 1876.

JOHN M. BARRETT, *D'y Sheriff.*

Sheriff's Return.—Service at Domicile.

On the 19th day of April A. D. 1876, I made service of the copies of petition and citation above-mentioned, on Mrs. Fannie M. Wells at the usual place of domicile or residence of said Mrs. Fannie M.

Wells, situated in the parish of Rapides, about 16 miles from the court-house of said parish, by delivering them to a person apparently above the age of fourteen years, whose name — E. M. Well, and who was at the time living in the house of the said Fannie M. Wells, — being absent.

D. C. RAUL, *Sheriff.*

District court, parish of Rapides, La., returned and filed April 22d, 1876.

CH'S MOORE, Jr., *D'y Clerk.*

34 In the 9th District Court for the Parish of Rapides.

J. M. Wells, Executor, &c., *vs:* Mrs. Fanny Wells & *als.* } No. 2159.

Now comes the defendants in the above entitled suit, and for answer to plaintiffs petition denying all and singular the allegations therein contained, except such as are hereafter admitted. Respondents admit the possession of the lands described, but aver that they are *bona fide* owners of the same, having secured them in part satisfaction of judgment which they hold against their husbands, E. M. and Jefferson Wells, for the restitution of their paraphernal claims, and that E. M. and Jefferson Wells were purchasers of said lands in good faith from Mrs. Mary Winn (now Richards) for a valid and valuable consideration, and they have been in the quiet and undisputed possession of said lands as owners under a title translative of property without any adverse claims for over twelve years. Respondents say Mary Winn was the wife of Walter O. Winn,
35 who died in the year 1860, and she was the universal legatee of all his property, the testator, her husband, leaving no heir either ascending or descending. Respondents say that Mrs. Winn opened the said succession and was the testamentary executrix and went into possession of and disposed of the effects of said succession as though they were her own, which she as universal legatee had a lawful right to do, being by law secure of right to do, being by law secure of right of all the effects of the succession by the death of the testator; respondents say that they in good faith purchased the said lands from the said Mrs. Winn, believing that she, as universal legatee, had the right to dispose of the same in the year 1862, and the act of sale was passed before a notary in the town of Alexandria, and duly recorded in the book of conveyances in the recorder's office of said parish, and was destroyed with the other records of the said parish by the burning of the court-house, in 1864.

Respondents, further answering, say that the succession of
36 of Walter O. Winn, at the date of his death, was solvent, the inventory of the property at a low estimate being about six hundred thousand dollars and the debts about one hundred & twenty-five thousand dollars, and that the amount of twenty thousand dollars paid to the said Mrs. Winn for the said lands was by her used in the payment of debts of the said succession.

Respondents further aver that the right of action of any of plaintiff was prescribed by the lapse of ten years, which prescription they specially plead as a bar to plaintiff's action.

Respondents aver that Mrs. Mary Winn, their vender, is bound to defend and warrant the titles to said lands, and that she and her husband, R. Keem Richards, are residents of the State of Kentucky, and that a curator *ad hoc* is necessary in order that service of the call in warranty may be made.

Wherefore respondents pray that Jno. G. White, Esq., be appointed "curator *ad hoc*" to represent Mrs. Mary Winn and husband,
37 and that he be cited to appear and defend this suit, and on final hearing there be judgment rejecting plaintiff's demands, with costs. And if judgment is rendered against your respondents evicting them of the said lands, that there be judgment in your respondent's favor, against their said vender, for the sum of twenty thousand dollars, the purchase price, and for one thousand dollars lawyer's fees and costs of defending this suit.

W. F. BLACKMAN,
Att'y for Def'ts.

Filed May 5th, 1876. J. H. RANSDELL, *Clerk.*

Dist. Court, Rapides Parish, Louisiana.

J. M. WELLS, Pub. Adm'r,
vs.
F. M. & IDA F. WELLS. } No. 2159.

And now cometh the defendant in the above-entitled and numbered suit, and ask leave of the court to file this their amended answer.

Defendants, adopting all their original allegations, say: That the succession of Walter O. Winn ceased to have any existence, either in law or in fact, in 1861, as Mary E. Winn (now Richards)
38 took possession of the same under the will unconditionally, ignoring entirely her appointment as executrix, which, by said act of heirship and ownership, put an end to said succession, respondents saying the universal legatee and executrix being one and the same person, the moment that act of heirship were committed showing the intention of said heir or universal legatee to unconditionally accept as such, her position or status as executrix ceased by confession; that the said universal legatee continued to exercise ownership of the property, entirely ignoring this succession, said debts of her testator, and no one questioning her right as heir or universal legatee, nor did any creditor appear until many years afterwards to question her rights. The said universal legatee, after exercising acts of ownership and possession as heir for a number of years, could not change her position of executrix, either at her own instance or of her creditors.

Further, that there are now no debts owing, as the same have all been prescribed, and this suit is neither equitable nor necessary.

Respondents say they received and purchased these lands in
39 question under an act dative "in payment" of a judgment which they held against their husbands respectively for the restitution of their paraphernal and separate effects, and that their said husbands are bound to warrant and defend the title to the said land in controversy, as will fully appear by the said act of "dative in payment," annexed to and made part hereof.

Wherefore, adopting the prayer and allegations in the original answer, it is prayed that your respondents be authorized by the court to file this amended answer and prosecute to final judgment the suit; and that the said Evremond M. & Jefferson I. Wells, both residents of your said parish of Rapides, be called and cited in warranty, and that a copy, as well as the orignal answer, be served upon the said E. M. & Jefferson Wells; and that after all due proceedings had, they have the same judgment against their warrantors which may be rendered against them in the principal action. They further pray that time be allowed them to call their said warrantors in to defend this suit, and that the prayer for the appoint-
40 ment of J. G. White as curator *ad live*, to represent Mary E. Richards, be stricken out of the original answer, inasmuch as she was not their original vendor. They pray for all eqitable, and for general relief, and cost, &c.

J. G. WHITE,
Att'y for Defendants.

Filed May 21st, 1877. C. S. RANSDELL, *D'y Clerk.*

District Court, Parish Rapides, Louisiana.

J. M. WELLS, Jr., Pub. Adm'r,
vs.
F. M. WELLS & *als.*
} No. 2159.

And now comes both of the warrantors, Evremond & Jefferson Wells, both residents of your parish of Rapides, Louisiana, and for answer to the petition and call in warranty, say: That they did purchase the property in question from widow Mary E. Winn (now Richards) by public act, passed before Edwin C. Leekie, notary public, on the —— day of ——, A. D. 1862, for a valid and valuable consideration, which went to pay, and was used in paying, the debts left by W. O. Winn, taking a full
41 and perfect and full guarantee title thereto from their vendor.

The deed or title to the said property was full and perfect, one translative of property, and such as gave in law and equity your respondents a good, complete, and perfect title to the land in controversy. That the title to the property after being duly recorded was destroyed by fire in May, 1864, when the court-house in your parish was burned, all of which will be shown on the trial hereof. Your respondents show that they went into the immediate possession of the said property as owners, and that they and their vendees have held the quiet, peaceable, and undisturbed possession thereof as owner from the date of the execution of the said

act of sale until the institution of this suit, and that they purchased the said property and transferred the same to their vendees with the utmost and most perfect good faith, and they now expressly aver that there is not now and has not been since the last will and testament of Walter O. Winn was probated such a thing, person,
42 or being, as his "succession;" and it was forthwith merged in the universal legatee, Mary E. Winn (now Richards), who instantly treated all the property which was of very great value and largely in excess of all claims against the said succession and putting it entirely and forever out of existence.

They further allege that there are no debts due by the succession of Walter O. Winn; that if ever were any, they have long since been prescribed, and this suit to revive the said succession and bring into it the property in question is unnecessary and vexatious. Respondents specially interpose and plead the prescription of three, five, and ten years to any and all claims and demands which the plantiff avers in his petition to exist.

They specially plead the prescription of ten years to the action brought by the plaintiff, and show that Walter O. Winn left neither ascendants nor descendants at time of his death, and it becomes necessary to call in warranty to defend this suit his universal legatee, Mary E. Winn (now Richards), and the immediate
43 vendor of your respondents. Wherefore it is prayed that the said Mary E. Richards and her husband, A. Keene Richards, the latter to aid, authorize, and assist his said wife, both residents of the State of Kentucky, be called and cited in warranty to defend this suit. That J. Andrews, Esq., an attorney at law, be appointed curator *ad hoc* to represent the said absentees, and that the said curator *ad hoc* be cited and notified as the law provides in such cases.

That after all due and legal proceedings had it is prayed that the plaintiff's demand be rejected, and that your respondents be hence dismissed with their costs. They further pray, in the event of the plaintiff's demand being sustained, for such judgment in their favor against their vendor, Mary E. Richards, as may be rendered against them herein for all damages and costs and for general and equitable relief, &c.

J. G. WHITE,
Att'y for Defendants.

Filed June 5th, 1877.

J. H. RANSDELL, *Cl'k.*

44 I hereby accept the appointment of curator *ad hoc* to the absentees, Mary E. Richards and her husband, A. Keene Richards.

This June 5th, 1877.

JAS. ANDREWS,
Att'y at Law, Curator ad hoc.

J. M. WELLS, Jr., Pub. Adm'r,
vs.
F. M. WELLS & *als.*
No. 2159.

Now comes into court James Andrews, Jr., curator *ad hoc*, representing herein Mary E. Richards and her husband, A. Keene Richards, absentees, and for answer to the call in warranty of E. M. & Jefferson Wells herein, admits that she sold the property herein described to said Evremond M. & Jefferson Wells for a valuable and valid consideration, inasmuch as she was by last will and testament of Walter O. Winn made his universal heir and legatee.

And further answering, denies any responsibility herein, and prays to be dismissed with her costs.

JAMES ANDREWS,
Curator ad hoc.

45 Filed June 5th, 1877.

J. H. RANSDELL, *Clerk.*

J. M. WELLS, Exec'r.
vs.
F. M. & IDA WELLS.
No. 2159. 9 Dist. Court.

In this case the pl'ff moves the court to strike out the call in warranty contained in the amended answer on the following grounds, viz:

1st. Because the plaintiff and defendants in warranty have all been duly cited and answered as defendants in this suit and are before the court, and there is no need that one portion of the defendants should have the other portion cited in order to have their respective rights guaranteed.

2d. Because it would be unreasonable after the case has been at issue one year to grant a further delay to have the defendants warrantor cited.

3d. Because the case has been fixed for trial and it is too late on the eve of a trial to ask for a call in warranty.

4th. Because this call in warranty is a mere pretext and asked for the purpose of delay.

46 Wherefore plaintiff prays that said call in warranty be stricken out.

R. J. BOWMAN,
Att'y for Pl'ff.

Filed May 21st, 1877.

J. H. RANSDELL, *Clerk.*

J. M. WELLS, JR., Pub. Adm'r.
vs.
F. M. WELLS & *als.*
No. 2159. District Court, Parish of Rapides, Louisiana.

Be it known and remembered that on the trial of this case on the 5th day of June, 1877, the defendants offered to prove by the witness, M. Ryan, that Mrs. Mary E. Winn was in the State of Texas in the year 1865, and that she did not return from Texas to Louisi-

ana until January, 1866. That she was not in Alexandria, La., on the 1st of November, 1865, and that the nine notes offered in evidence were all in the hands of said witness unsigned by Mary E. Winn for some time after the first day of November, 1865, and that she said Mrs. Winn did not in fact sign the acknowledgment written on said notes until she reached New Orleans in January,
47 1866, when she signed them in the month of January, 1866, and that at the time she signed the said acknowledgment written on the notes they were all in fact prescribed, and, as a consequence, not of any binding effect as against the succession of W. O. Winn, and no claims against the succession; to which testimony the plaintiff objected, which objection the court sustained, and excluded *and excluded* the testimony on the grounds and further reasons that, as already set forth in the note of evidence at length, under act No. 102, Acts 1877, the court did not think it competent to pass upon the validity of the claims against the succession of W. O. Winn in this collateral manner. The creditors themselves have not provoked the injury, nor are they parties to this suit, and I think it would be unjust to allow other parties to bring witnesses to prove the claims invalid, without allowing the creditors themselves to offer rebutting testimony, which they could not do. Defendant, in offering this testimony, declared the purpose to be to show that there are no debts due by the succession of
48 W. O. Winn, and the plaintiff has no cause of action and is an intermeddler. The court does not think the capacity of the plaintiff to bring this suit can be enquired into in this manner. It might be competent in the probate court as an action to divest the executor, but I do not think it can be done in this manner in this court.

To which ruling of the court the defendants except, and now tender this their bill of exceptions, to have the same signed and certified by the court.

This 9th day of June, A. D. 1877.

ROB'T P. HUNTER,
Att'y, Judge ad hoc.

The district judge being excused as having been of counsel.
Filed June 9th, 1878.

E. L. RANDALL, *D'y Clerk.*

Note of Evidence.

District Court, Rapides Parish.

JUNE 5TH, 1877.

J. D. WELLS, Adm's'tor,
vs.
F. M. & IDA WELLS. } No. 2159.

Plaintiff's Testimony.

Offered tableaux of debts, filed April 19th, 1869, and the
49 petition for its publication and homologation, marked 1–1. Record No. 40.

Petition for the sale of the property in Madison parish, filed July 1870, and the order of sale, marked 3–3; the process-verbal of the probate sale of said property, marked 4–4. Record 40.

Petition and ac., filed Jan'y 2, 1872, and marked 5–5.

Petition and sale of Cropland, filed 1874, marked 6–6.

Petition of John S. Mayfield to destitute Mary E. Richards, executrix of the succession of W. O. Winn, filed April 9th, 1874, marked 2–2.

Judgment on tableaux of debts, filed April 19th, 1869, marked —.

Judgment of supreme court on petition marked, 2–2; said judgment 7–7.

Admitted that J. M. Wells, Jr., was pub. administrator, appointed dat. tes. executor of the succession of W. O. Winn on the 22 day of December, 1875.

Offer the original notes drawn in favor of Rochford, Brown & Co., and now held by Jno. S. Mayfield, marked 8–8, with leave to withdraw the original and furnish certified copies of the same.

50 Judgment in suit of No. 135, D. C., entitled Jno. S. Tarver *vs.* W. O. Winn; judgment signed 12 M'ch, 1866, marked 9–9.

Judgment in D. C., suit No. 860, entitled Williams Haskins *vs.* W. O. Winn, marked 10–10.

It is admitted that this suit is against Mrs. Winn, as executrix and universal legatee of W. O. Winn. This admission is made at the instance and for the benefit of the def'd't, as his testimony.

Judgment in D. C., suit No. 373, entitled Wm. H. Gasquet *vs.* Mrs. Mary E. Winn, 11–11.

Judgment in D. C., suit 338, entitled J. H. Ransdell, tutor, *vs.* W. O. Winn and Johnson, marked 12–12.

Judge BLACKMAN, sworn, says: He is acquainted with the Lido plantation. There is a sugar-house and imp'ts on it. I suppose there are 7 or 8 hundred acres of cleared land on it. Lands in the neighborhood are renting for 3 to 4 dollars an acre, and some on that place are renting for the improvements that are to be put on them.

Cross-examined:

51 To the best of my knowledge, there is about 500 acres of land cultivated on Lodi plantation this year. When the land in this vicinity rents for 3 or 4 dollars an acre, the owner has to pay the taxes and to keep the imp'ts in repair. The taxes and the imp'ts that they are making on the land this year are more than equal to the rents. The revenues on the property have not been sufficient to pay current expenses for the last 4 or 5 years.

Plaintiff's testimony closed.

Judge M. RYAN sworn, says for the defendant:

I was acquainted with W. O. Winn. He died in the parish, in March or April, 1864. He left a large property at the time of his death; estimated to be worth from four hundred thousand to half million of dollars. His property was considered largely in excess of

his debts. I considered his estate very solvent. I know a great deal about it. I was his attorney-at-law. I drew up his last will and testament a few days before his death. I had the will probated
in this court immediately after his death. The will and all
52 the mortuary proceedings were destroyed by fire, in May,
1864. The contents of his will was as follows: "I, Walter O. Winn, make this my last will and testament. I appoint my beloved wife, Mary E. Winn, my executrix and universal legatee. I leave to her all the property, real or personal, of which I may die possessed or own," and signed by Walter O. Winn. Mrs. Winn qualified as executrix under the will immediately after his death, and took possession of all the property, just as Winn left it at the time of his death. She qualified as executrix under the will immediately after his death, and took possession of all the property, just as Winn left it at the time of his death. She qualified as executrix, and took possession under the will. She took possession of the property, just as it was left under the will, as executrix and universal heir and legatee. She never told me she took as universal legatee or ex't'x. Mrs. Winn was considered a very wealthy woman, and that the debts was owing would not absorb the property that was left her at the time of Mr.
Winn's death. At the time Winn died I had a pretty good idea
53 of his debts. I really think at the time of Mr. Winn's death,
120,000 dollars would have covered all of his debts. I have no precise means of forming an idea of Winn's annual income at the time of his death; it was not very great, because he was buying negroes and opening his plantations; there was an inventory taken of his property in Rapides parish; in other parishes I sent commissions; some were returned taken and some were not; he had land in DeSoto, Caddo, Avoyelles, Pointe Coupee, Carroll, and Madison, and perhaps in other parishes; I have no means of estimating the value of the landed estate alone, exclusive of negroes; I know that the Winn Forrest place was considered very valuable. At the time of Winn's death, it would not be unreasonable to say the landed estate was worth two hundred thousand dollars, from two hundred to two hundred and fifty thousand dollars. Mrs. Winn lived on the property as she did before, and everything went on as they had been, and
she treated it apparently as she would her own, same as any
54 prudent person would have treated it under the same circumstances; she did dispose of one piece of property, but I do not know whether she signed the sale as universal heir and legatee alone, or as universal heir and legatee and executrix; that was the sale in question. I was present at the sale; it was a sale by public act before a notary public; it was a cash sale for 20,000 dollars cash; I watched these sums because I wanted them, because I was anxious to see the debts of the succession, and inquired about them, and did not know what became of them, except from hearsay. I don't know that Mrs. Winn paid any debts of W. O. Winn personally. Wade Bynum, her father, seemed to have control of the matter; he was her cassier and pretended to be her agent, and to have control over her. I inquired what had become of this money; I was informed Mr. Bynum

was paying debts; I asked what debts; I learned of a debt of St. John and Burges, and to Frazier, the tailor; I went and asked them about it and they said yes, some money had been
55 paid them due by Winn; I think that all together it was something like 1,100 dollars; I asked Mr. Bynum what had become of this money, and his daughter had it at Winn Forrest plantation, and when I afterwards asked the same question I was told that it was burned up; was after the house had been burned up in 1864; he did not tell me how much was burned.

By the COURT: This testimony was admitted only to prove that Mrs. Winn treated and regarded the property left by her deceased husband as her own under her title as universal legatee. Admitted after objection for that purpose only.

I opposed the sale because it was confederate money she was to be paid in, and I did not consider it the value of the property, and also because I did not want this money to go into the hand of her father, because I believed the family would squander the money, and it would not go to the payments of debts; her father was a very careless, improvident man in money matters; no material
56 change had taken place in the property of Winn up to the time of this sale; the last term of the court held in the parish after the war broke out was in November, 1862; the clerks and sheriffs were here, and the offices were open for business, but we had no regular session of the court, and suits could have been filed at any time during the war, except during the time the Federal army was in actual possession, which was a very short time, not three months altogether; I remember what time Mrs. Winn returned from Texas to Louisiana.

By the COURT: Council for the defendant offered here to prove by the witness Ryan that the notes offered in evidence by the plaintiff, held by Jno. S. Mayfield, were prescribed; that the endorsement on the back thereof, signed Mary E. Winn, date Alex'a, La., 1st ——, 1865, was not made by her at the time, and that she was in the State of Texas at that time, and that they were signed subsequently to that date, in New Orleans, on January, 1866, and that notes were in witnesses' hand after November, 1865, and were not then
57 signed by Mrs. Winn; the purpose of this testimony was to sustain the allegations in the answers that there were no debts of the succession of W. O. Winn, and to rebutt the testimony given by the plaintiff to show that there were debts.

The plaintiff objected, 1st, on the ground that the testimony was wholly irrelevant for the purpose offered. On the further ground that Mrs. Winn and her assignees are estopped from contradicting her judicial admissions in the evidence offered in this case. On the further ground that the question of the validity of these notes is *res adjudicata*, and cannot be controverted by parole testimony collaterally. The court sustained the objection, and the testimony was rejected for the reasons as above shown on pages 11, 12 & 13 of this note of evidence. There was no formal application ever made to have Mrs. Winn sell property to pay debts of the succession. There

was a rule taken on the executrix to have her show an ac. and to destitute her. Offered by defendant Rule to destitute in P. R. 40 marked. Mrs. Winn has been been in this parish since '66;
58 she was here in 1869; she came on here with her husband, but only remained a short time. I have been paid by the — for my services as counsel.

Cross-examined.

I was present at the sale of the property; the sale was made for Confederate money; I never saw the money counted down, but I know that I was counsel in the case and was consulted with in the matter, and am certain that that was the consideration. I remained as counsel for the succession of Winn for years after this. In the fall of 1862 the value of property had greatly depreciated, in this country especially.

This testimony was rejected by the court for the following reasons, in addition to any and all of those assigned by the plaintiff, viz:

First. Because the court does not think that the capacity and right of the dative testamentary executor of the succession of Walter O. Winn to prosecute this suit can be attacked in the collateral manner here attempted, as announced by counsel for defendants whose purpose is to test and try the validity of all the debts due
59 by the said succession or claimed to be due, to show that there are no valid and legal debts due by the said succession, and consequently that there is no necessity for an administration of said succession. I think that there would be a proper objection to urge in the succession itself in the probate court, and might be a sufficient reason to divest the dative testamentary executor in that court, but cannot be urged in this court in this way.

Second. Because the testimony already in the record, introduced by the plaintiff, is entirely documentary, was offered and taken without objection, and the court did not understand it to have been offered for any other purpose than to show the existence of claims either acknowledged or litigated, and the court does not think that parole evidence is admissable to rebut the testimony offered by plaintiff for any purpose, and I think that it is not competent for either plaintiff or defendant in this case to raise the issue of the validity of the debt against the succession of Winn, so as to
60 require this court to pass upon that question; the most either party can require is to be permitted to show the existence of claims and their present shape or status. The direct point now before me is the attempt, on the part of the defendant, to show by the witness Ryan that nine notes introduced by plaintiff, and held by Mayfield, and endorsed by Mrs. Mary E. Winn on Nov. 1st, 1865, was not so endorsed by her at the time, for the purpose of having this court pass upon the question as to whether or not they are prescribed.

I do not think the testimony competent, nor do I think that I can be called upon in this proceeding, to which Mayfield is no party, to pass judgment upon the validity of his claims. It would be manifest injustice to do so without allowing him to be heard in de-

fense of his claim. This he cannot do, because he is not a part- to this suit, nor has he provoked this inquiry as to his claim.

Testimony of RYAN—continued:

Especially in slaves, from their previous condition as slaves.
61 Lands had also gone down in value, there was no demand for them. Land and personal property was then almost without a moneyed value, because there was no money in the country.

Re-examined:

When I say lands and slaves had gone down in value, that was in 1863; they commenced to go down in 1862, and from that time they went down very rapidly.

Offered record Wm. A. Gasquet *vs.* Mrs. Mary E. Winn, 373 D. C.

It is admitted that Mrs. Winn, as univereal legatee, donated the Cropland plantation, in the parish, to her mother, Mrs. E. Bynum, in 1876.

It is admitted that the ac. marked 5-5 is the only ac. ever filed by Mrs. Winn, and also that it was on file in answer to the rule of Jno. S. Mayfield.

Offered the evidence of T. C. Manning, taken by consent.

M. Ryan says: Mrs. Winn never, to my knowledge, saw the tableau of debts that I filed for her, and never saw any of the claims that were filed on it.

62 Offered by plaintiff extract from minutes of parish court homologating the tableau of debts.

Judge RYAN recalled by plaintiff: The succession of Winn is now totally insolvent if these claims against it are allowed.

Note of Evidence.

No. ——, District Court, Rapides Parish.

J. M. WELLS, Adm'r, *vs.* F. M. & ILA WELLS.

Mr. EVREMOND M. WELLS, sworn for defense, says: I am one of the defendants in this suit. I purchased the property in dispute, in connection with my brother, Jefferson Wells, from Mrs. Mary E. Winn, now Richards, in the year 1862. Some time in the fall of that year I went into possession forthwith, and me and my vendees have held quiet, peaceable, and undisputed possession of it from that time until the institution of this suit.

The act of sale was passed before Edwin C. Leckie, notary public, and was instantly recorded in the recorder's office of Rapides
63 parish, and was destroyed by fire in May, 1864. I was acquainted with the late Walter O. Winn; he was first cousin of my wife and the wife of Jefferson Wells; he died in 1861 in this parish; he left a great deal of property, then of great value, when he died; his property was considered to have been worth between

four hundred thousand and one-half million dollars at the time of his death. Walter O. Winn left neither ascending nor descending heirs at the time of his death. His widow, Mary E. Winn, now Richards, was left by him at the time of his death as universal heir and legatee.

When I purchased this property his succession was considered largely solvent. The debts of Walter O. Winn, as compared with the value of his succession at the time of this sale, in the fall of 1862, were comparatively nothing.

Question. How did Mrs. Winn treat the property immediately after the death of her husband?

She treated it as her own, and not as executrix, or in any other fiduciary capacity. The title I took from Mrs. Winn was a
64 full guarantee title. I do not know whether letters testamentary ever issued to Mrs. Winn; I know that she treated the property, and all other property, as her own. Mrs. Winn, as soon as her husband died, was considered as extremely wealthy, and there is no question but that the succession of W. O. Winn was largely solvent in 1862, and at the time we bought this property. No losses had occurred at the time we bought this property by the war, or otherwise; the property was in the same condition that it was at the time Winn died. If Mrs. Winn ever was executrix of the succession of W. O. Winn, I was not aware of it. The sale of the property in question to us was a cash sale. We paid cash on the spot at the time the act was passed.

Question. Do you know what went with the money that you paid Mrs. Winn for the property?

I know what went with a small portion of it only.

Question. To whom was it paid?

NOTE.—The testimony is offered first for proving the alle-
65 gations made in the answers and to show that Mrs. Winn treated the property and the debts as her own individual property and debts, and ignored the succession of Winn.

Plaintiff objects to this testimony to show that Mrs. Winn paid any debts of the succession of Winn on the ground that the executrix could not pay any debts of the succession unless ordered by the court contradictorily with the creditors, and the payments of the debts of a succession can be paid only *in concourse* with the creditors and parole is inadmissable to prove that payment.

By the COURT:

Testimony is admitted for all legal purpose as set up in the pleadings, and specially to show that Mrs. Winn paid debts due by her husband at the time of his death as universal legatee under his will, and not as executrix, and will not admit any testimony to show that acting as executrix she paid any debts; and the court sustain the objection made on that ground, and limits the effect of the
66 testimony to such legal purposes as may be competent under the pleadings in this case.

Answer. I know of but one debt paid; that was to Wm. B. Lewis, as atty's fees in the suit of Walter O. Winn *vs.* The Estate of Mrs. Harriett F. Overton; the fee amounted to about the sum of $4,000 $\frac{00}{100}$ paid on the same day of the sale out of the proceeds of the sale. This was a debt of Walter O. Winn, contracted during his lifetime with his att'y, W. B. Lewis, in the litigation, as stated above. Mary E. Winn in 1861 made an exchange of certain slaves with one of the defendants, the said slave belonging to her testator. Some time in 1864 Mrs. Winn took all the personal property and slaves on Cropland plantation and moved them out to Texas; she went with them. I am positive Mrs. Winn returned from Texas to the parish of Rapides about the 1st of January, 1866; it was in the year 1866, on her return to this parish; she left in about a week's time for the city of New Orleans, and has never been in the the parish
67 since. Mrs. Winn married A. Keen Richards in the year 1866 or '67, and moved to Georgetown, Ky., which is now her present home, and has been since her marriage.

Cross-examined:

The sale to me was made in fall of 1862, after the sugar crop was taken off. I don't recollect the exact date. Walter O. Winn's land in cultivation consisted of his interest in Lodi and the Cropland plantation in this parish, plantation in Avoyelles parish, on the Atchafalaya river, two large and one small plantation in Carroll and Madison parishes, interest in the Mitchel Neal property in Rapides parish. He must have own- 400 or 500 slaves, stock, farming implements, &c., necessary to cultivate these large plantations. The slaves were set free.

Re-examined:

Question. Did Mrs. Winn tell you why she wanted to sell her interest in the Lodi plantation?

Testimony offered for the purpose of showing that she used the money for the —— of paying the debts of her deceased hus-
68 band, for which she was bound as universal legatee.

Plaintiff objects, on the ground that the declaration is *ex parte*, and for grounds stated above in the objections to the previous questions.

By the COURT: Objections sustained and bill reserved by defendants and testimony taken to show for itself.

Answer. Mrs. Winn stated to me that she wanted to sell the property to pay the debts of her husband and save her property.

JEFF WELLS, sworn, says: I have heard the testimony given by E. M. Wells, the witness last on the stand, and that I am one of the parties that purchased the ¼ of the Lodi place from Mrs. Winn, and am one of the defendants in this suit, and I corroborate the testimony given by E. M. Wells fully and in every particular.

Testimony closed.

J. H. RANSDELL, *Clk.*

J. M. WELLS, Ex., *vs.* F. M. & IDA WELLS.

69 The testimony of T. C. MANNING, taken on the part of the defendants. The legal form and manner of taking said testimony wa-ved on the part of plaintiff, reserving all other legal objections to said testimony when offered in evidence on the trial of this cause.

Walter O. Winn instituted suit against the succession of Mrs. Overton before the war; how many years I don't remember; and after trial in the district court, judgment was rendered in favor of the defendants. Mrs. Overton had been executrix of the succession of her husband, Walter Winn; mother was daughter of Gen'l and Mrs. Overton. On appeal to the supreme court the judgment was rendered, and a decree was made that the plaintiff was entitled to an account. A rehearing was applied for and granted, and the case rested.

After the plaintiff's death Mrs. Winn, his widow, was made a party to the suit in her capacity of executrix and universal legatee, and a compromise was of conflicting claims about his will was made by and between her and the Brent heirs, by which it (the suit)
70 was dismissed. The paper or writing containing her dismissal of the suit was [on] file in the suit in court. The conflicting claims were there. Mrs. Winn was made universal legatee by her husband. The Brent heirs were cousins of Winn, and in case of his intestacy were part heirs of her property. The Brent heirs agreed that they would not attack the will, and Mrs. Winn agreed that she would dismiss the suit *vs.* Mrs. Overton's Succession, of which the Brent were part heirs.

TH. C. MANNING.

Filed in evidence on June 5th, 1877.

J. H. RANSDELL, *Clerk.*

Know all men by these presents that we, J. M. Wells, ex'r, and R. J. Bowman, as principals, and as securit-, are held and firmly bound unto J. H. Ransdell, clerk of the district court of the parish of Rapides, in the sum of one hundred dollars, for the payment whereof we bind ourselves, our heirs, administrators, and executors, firmly by these presents.

71 Sealed with our seals, and dated at Alexandria, La., on the 25th day of June, 1877.

Whereas the above-bounden J. M. Wells, executor, has appeal-from a final judgment rendered against him in his said capacity, in the suit of J. M. Wells, Executor, *vs.* F. M. & Ida Wells, 9th court, in and for Rapides parish, Louisiana, on the — day of June, 1877:

Now the condition of the above obligation is such that the above-bound J. M. Wells, Jr., executor, in his said capacity, shall prosecute appeal, and shall satisfy whatever judgment may be rendered against him, if he be cast in the appeal; otherwise the said R. J. Bowman, surety, shall be liable in place.

J. M. WELLS, *Executor*,
By R. J. BOWMAN,
Agent & Att'y.
R. J. BOWMAN.

District court, parish of Rapides, La. Filed 25th day of June, 1877.

C. L. RANSDELL, *Dy Clerk.*

72 THE STATE OF LOUISIANA, *Parish of Rapides:*

Ninth Judicial District Court. May Term, A. D. 1877.

J. M. WELLS, Jr., Public Adm'r and Dative Testamentary Executor, &c.,
vs.
F. M. WELLS *et als.*
No. 2159.

In this cause, by reason of the law and the evidence being in favor of the defendants, Mrs. Fannie M. Wells and Jefferson Wells, and against the plaintiff, J. M. Wells, Jr., in his capacity of public administrator and dative testamentary executor of the succession of Walter O. Winn, it is therefore ordered, adjudged, and decreed that the said plaintiff take nothing by this suit; and, for the reasons above assigned, it is further ordered and decreed that the defendants, Fannie M. Wells and Ida F. Wells, be, and are hereby, decreed to be the owners of the property described in plaintiff's petition.

It is further ordered, adjudged, and decreed that the defendant have and receive then of the plaintiff their costs of the suit.

This done, read, and signed in open court, this 11th day of June, 1877.

73 ROBT P. HUNTER,
A Practicing Attorney-at-Law, Acting District Judge.

W. T. Blackman, the district judge, being reversed.

Filed June 11th, 1877. C. L. Randall, d'y clerk.

J. M. WELLS, Jr., Public Administrator, Dative Testamentary Executor of the Succession of W. O. WINN,
vs.
F. M. and IDA WELLS, and their husbands, E. M. & JEFF. I. WELLS.

J. M. Wells, Jr., as public administrator, was appointed dative testamentary executor of the succession of Walter O. Winn, now under administration in the probate court of this parish.

He brings this petitory action, asking that the sale by Mrs. Mary E. Winn, in the fall of 1862, of the one-fourth of the Lodi plantation, in this parish, to Evremon- & Jefferson J. Wells, as well as a dative ex. payment by them to their wives, Fannie M. and Ida Wells,
74 in 1874, be decreed to be an absolute nullity, and the said property be put back into the said succession of W. O. Winn and held liable for the debts due by that succession.

The plaintiff claims that this sale by Mrs. Mary E. Winn was made in her capacity as testamentary executrix under the will of her deceased husband, without authority of the court having probate jurisdiction; that said sale was null *ab initio,* and that the title acquired by the defendants Evremond and Jefferson J. Wells under said pro-

bate sale of succession property by the executrix was not a title translative of property, and that the vendees cannot, by virtue of their possession thereunder, have acquired any title by prescription.

The defendants answer that the sale made by Mrs. Winn, 1862, was made before a notary and witnesses; that E. M. & Jeff. J. Wells paid, in cash, for the land the sum of $200.00\frac{00}{100}$; that it was not made by Mrs. Winn in her fiduciary capacity, but as univer-
75 sal legatee of her deceased husband. They claim that at the time of the death of W. O. Winn, his property was valued at about $500,000, and that his debts were only about $120,000; that by his will he left his widow both executrix and universal legatee; that she had the will probated to put her title on record, and that she then took possession of the property left by him as universal legatee, treated it as her own, and assumed all the debts as her own. That the succession was thereby merged by confusion into her representative capacity as heir, and not as executrix, and that it was with a full knowledge of her quality as heir that they purchased the property from her; that they took a full guaranty title from her as heir, with all the forms of law, and have held in good faith under that title, and under the dative ex. payment made in 1874 from 1862 without disturbance, until this suit was filed on the 18th of April, 1876.

At the May term of the court the defendants filed their
76 answer praying that they be allowed to call Mrs. Mary E. Winn in warranty to defend this suit, and that she being an absentee residing with her husband in Kentucky, a curator *ad hoc* be appointed to represent her. The order was granted, the curator appointed, and the case continued. There was no term of the court in December, 1876, and at that time they filed a supplemental answer alleging that they had made a mistake, and the wives who had acquired title by dative ex. payment from their husbands, asked for delay to call them in warranty, and then the husbands also asked for delay to call their vendors Mrs. Winn in warranty. The calls were allowed, but delay refused, as defendants had secured a delay of one year, and had not acted on the permission granted them, and because the previous call which had been allowed was certainly good as to either one or the other, the husbands or wives, and was good for both, if the original answer had been intended for all the defendants, as I think it certainly was, and was good even as
77 to wives in any event, because the title to the wives contained the subrogation of their husbands' warranty against their vendor, Mrs. Winn.

The defendants, the husband-, however, have answered, and at their request a curator was appointed in addition to the other one formerly appointed, and who is now the counsel representing all the defendants. Mrs. Winn is not sued, and if her immediate vender should have any claim against her by reason of this suit their rights to do so is fixed by the law and is reserved herein.

Defendants specially plead the prescription of three, five, and ten years in bar of plaintiff's action.

On the Merits.

The facts in this case are few and, except in two particulars, or I might say one particular, all in effect admitted in the pleadings on both sides. It is necessary to briefly review them.

Walter O. Winn died in this parish in March or April, 1861, leaving a will whose term and phraseology are given by Mr. Ryan
78 from memory as follows: "I, Walter O. Winn, make this my last will and testament. I appoint my beloved wife, Mary E. Winn, my executrix and universal legatee. I leave to her all the property, real and personal, of which I may die possessed or own," and signed his name. It will be observed that he did not grant the seizure of the estate to the executrix. This will was probated, and Mrs. Winn went into possession of the property. The only witness now cognizant of the fact, the will and all the mortuary proceedings having been destroyed by the burning of the court-house in May, 1864, is Judge M. Ryan, who testifies that she qualified as executrix and took possession of the property just as it had been left, but whether as executrix or universal legatee he cannot say. The only point, as to that, positively proven by him is that she qualified as executrix by taking the oath, &c.

This much I find to be judiciously admitted in the first answer filed by the defendants. It is proven that W. O. Winn left no forced heir and hast the legal right to so dispose of his prop-
79 erty, no one but his creditors having the capacity to dispute the title and possession of Mrs. Winn as unversal legatee. It is in proof that at this time the property was largely in excess of the debts, and that there were no creditors pressing their claims, although the courts were open here, notwithstanding the war then progressing, and that no creditors presented their claims until 1865, when the nine notes held now by Jno. S. Mayfield and introduced here were acknowledged by her, signing herself, "Mary E. Winn," and in 1869, when suit- were filed, some against her individually as universal legatee and some as both executrix and universal legatee.

There were no actual proceedings to revive the succession of W. O. Winn in shape as a probate matter until 1869, when there was a tableaux of debts filed by the former attorney of the succession, which it is proven she never saw, and of which she knew nothing personally. Since then a large mass of papers have accu-
80 mulated, as shown by the documents introduced in evidence here taken from what is called the Winn succession, and numbered 40 on the probate docket. The only voluntary appearance of Mrs. Winn and acknowledgment of her capacity as executrix is a petition for the sale of lands in Madison parish, Louisiana, filed in July, 1870, in the probate court of this parish. In 1866 or '67 she married her present husband, A. Keene Richards, and has since that time resided with him in Georgetown, in the State of Kentucky. In 1867 she made a donation to her mother of a portion of the landed estate which had belonged to her husband, "The Copeland" plantation in this parish. Other act- of heirship are proven, and the evidence is abundant that she treated the property

as her own, ignoring her capacity as executrix entirely, and there is no proof that she ever changed her mind from the fall of 1862, when she sold the property in question here, until she filed the application in the probate court here for authority to sell the lands
81 in Madison parish. There is evidence in the record also sufficient to show that other parties considered her a wealthy woman, as universal legatee, and that she was considered by others than herself in possession of the property belonging to her husband at the time of his death as his universal legatee, and not as executrix.

At the time this sale was made, in 1862, there seems to have been no doubt or question as to the character of her possession.

This statement of facts brings us to the somewhat novel consideration and in some respect intricate question of law involved in this case.

I consider it settled by the evidence that Mrs. Winn did qualify as executrix at the time the will was probated, and if she had been simply executrix, or representing her husband's succession in any other fiduciary capacity at the time she made this sale without authority of court, and of her own volition, then there is no
82 dispute, nor do I suppose that any one can be found to contend that such a sale in such a capacity would not have been an absolute nullity. The plaintiff contends that if she qualified as executrix, she could not afterwards, of her own will, change the character of her possession, and refer me to Pothrer, Nos. 31, 32 & 60, 12 R. 210, 1 A. 320. I have examined these authorities, as well as act 3480 of the old and now 3514 of the new Civil Code, and find them to be to the effect that one cannot prescribe against his own title in this sense; that he cannot change by his own act the nature and origin of his possession. The article just preceding this, 3514 new C. C., says: Those to whom tennants' depositories, and such other persons having only a precarious possession, have conveyed the same by a title capable of transferring the ownership of property, may prescribe for the same. In either case the possession may be changed by the act of a third person, and in neither is there any prohibition to one holding under one kind of
83 a title from acquiring another and better title. I find the authorities cited to go to the extent of saying that one whose only title or possession grows out of a lease, a contract of usufruct, &c., cannot set up a plea of prescription, for the reason that the basis of that plea must be a possession of ten years with a title capable of transferring the ownership of property, or thirty years without any title at all, and even then the law raises the presumption of the possessor having such a title, and if it can be shown that he had such a title under a law or as a usufructuary and not as owner, it negatives the title translatives of property; and, as shown by plaintiff's authority, such a possessor cannot plead that prescription. The — go no further than to show that one to be able to prescribe at all must possess as owner. I don't find them to support his position that if Mrs. Winn in this case went into possession of this and other property as executrix, and in that capacity solely, that she could not

afterwards have changed her possession into that of universal
84 legatee. The proof is that she went into possession in both capacities, and I can see no reason why the court when the will was probated should not have recognized both of her capacities. The proof is that it did do so, as Judge Ryan says: "She went into possession as any other person would have done, being both executor and universal legatee." Plaintiff contends that the law would have fixed her possession as necessarily following her title, and would require her to possess under her highest title, as he puts it, that as representing the creditors of that estate. If she had derived her only possession or title from the creditors or from the fact that there were creditors to represent, then would there be no room for dispute, but as she held under the will and could represent the succession as well as heir or executrix, as the will did not give her seizure as executrix, *as the will did not give her seizure as executrix*, under the law C. C., 942, did give it to her as heir and uni-
85 versal legatee. I think the presumption in the absence of direct proof is against the plaintiff on this point.

But whatever was the capacity in which she qualified when the will was probated, there seems to be no doubt that she and others considered the property hers, subject, of course, to the payment of debts, and it is equally certain that she continued to treat it as such, and no creditor appeared to dispute her claim until Mayfield forced her attorney to file tableaux of debts, nor does she appear to have done any act as executrix from the time the will was probated, 1861, until the time she asked for authority to sell the Madison lands in 1870. These are acts for which these defendants here are in no ways liable, and which cannot effect their status required in 1862.

There are but three witnesses testifying to the will, which has been destroyed, with all the court records. Judge Ryan, [who] was present, opposed the sale on the ground that the consideration
86 was to be Confederate money, and he did not think the price sufficient. Plaintiffs have set up this Confederate-money consideration as one of their grounds of nullity; but I find at this time (1862) that kind of money was considered valuable; that property had depreciated but little, if any, and that while the Constitution forbids the courts to enforce contracts based upon that currency as a consideration, it has been repeatebly held by the supreme court of our State that where contracts of that kind have been executed, they will leave the parties where thir own acts have placed them. Judge Ryan does not remember in what capacity Mrs. Winn made the sale, but it would seem that, as her attorney, he must have opposed the sale on the further ground that an executrix could not sell the succession property at private sale, and that he would have so notified his client, if she had been acting in that capacity. The two Messrs. Wells, the vendors, testify positively that the sale was
87 made as universal legatee, and that if she was at that time executrix they did not know it. I think it has been sufficiently proven that they have purchased in good faith.

Was, then, the title acquired by the-, in the language of C. C.

act 3513, capable of transferring the ownership of property, or, as it is commonly called, translative of property? If it- succession had owed no debts, then there could be no doubt on this point. It was made before a notary and witnesses, with all these forms of law required for such acts. The only point in controversy is the capacity of Mrs. Winn to sell. All the other requisites, as laid down by the Civil Code, VII, were complied with. Art. 2452 says the sale of a thing belonging to another is null. Did the property belong to Mrs. Winn? C. C. A't 884 (Rayo). The person who has become the universal legatee of the deceased, who is possessed of all his property and rights, and who is subject to the charges for which the
88 estate is responsible, is called the heir, and no matter whether he be such by law, by the testament, or otherwise. The proof is that at the time of this sale the succession was largely solvent, and that Mrs. Winn did many act- of heirship which would have enabled the creditors to hold her individually liable. The law gives the heir that right to person the heir individually, and when there is no question of fraud involved I see no reason why the heir cannot force the creditors to pursue him individually. It would not affect the validity of their debts nor deprive them of the right to pursue the property formerly belonging to their debtor instead of other property of the heir, if the nature of their debts gave them any right to pursue specific property. It can make no manner of difference to them in what manner the succession is represented, and as long as there is ample property to pay the debts I am disposed to think that the creditors cannot force an administrator into the probate court if they have the succession repre-
89 sented by an heir or heirs who have unconditionally accepted the succession, the debts, as well as the propertr. It may be different as to special legatees of particular property, but in any events the rights of legatees and creditors are limited to the -mand that heir give security before going into possession, in order that if he does dispose of the property they may still have security for the payment of their debts, or they can, in the case of more than one heir, demand a separation of patrimony, so that the creditor of one heir, but not of the succession, may pursue his property. No demand for security was made in this case, and indeed it appears that everybody, creditors and all, were satisfied of the safety of their demands. The landed estate at that time, as shown by the witness Ryan, was worth from $200,000 to $250,000.

Another necessary enquiry arises here as to how far the heir of an entirely solvent estate may go in disposing of the property in excess of the debt. All that the creditors in any case can
90 demand is the payment of their debts or security for them. The heir, like any other debtor, with a writ of *fi. fa.* against him, may, I should think, have the right to designate what property should be sold for debt, and so long as it is sufficient, the debtor cannot complain that any other particular piece of property is not sold. It would be different, of course, if the debtor had a mortgage or lien on any particular property, but no such claim is set up here. The dividing line which limits the rights of the heir in this respect

must be when fraud of the creditor's rights would begin. To say that an heir inheriting property to the amount of a hundred thousand dollars, and debts of only $5,000, could not dispose of any piece of property until the $5,000 was paid, it seems to me would be as unjust to the heir as it would be to the creditors to say that owing $100,000 debts and having only $5,000 property, the heir could dispose of any of the property. I consider that the title
91 would be translative of property, if made as heir under the circumstances of this particular case.

That she did act in that capacity is proven, but the plaintiff contends that she had not the legal right to do so, and cites me to two strong cases—5 A., 643, and 4 R., 42—in support of his position. The maxim *caveat emptor* would seem to apply here with much force. In 5th Robinson case executors had been appointed by the will, but they had not qualified, and the universal legatee was seeking to be put in possession without waiting for them to be qualified or having sought the appointment of a dative testamentary executor, upon whom he could serve notice of his application, and the court say there must be an executor. In this case there was one. The executor and universal legatee were one and the same person. The 5th annual case is more directly in point. There the conditions were the same and the contest very much the same as here, with
92 this important difference: Jones had taken possession as executor, and in his answer admitted that he was acting as such. The court says that had he, as defendants contend Mrs. Winn did in this case, taken possession as legatee, and the creditors had allowed him three months to pass from the date of his unqualified acceptance as heir, that they could only have pursued him in that capacity.

As to prescription, *lex favet vigilantibus*, the creditors of this succession have slept upon their rights to pursue this property, if they had any, from the fall of 1862 until April, 1876, when this suit was filed. They have allowed other property of the succession, perhaps amply sufficient to pay whatever may be the amount of their debts, to be disposed of as shown here. These defendants have been in undisputed and undisturbed possession for more than fourteen years as owners. When one of two innocent persons must suffer, it is a maxim of the law that the one whose fault it is must bear the burden.
93 The defendants should have been put on their guard, so that they might have passed property of their vendor now disposed of by her. The property was held be the original vendors of Mrs. Winn for twelve years, and then transferred by them to the present possessors, Mrs. F. M. & Ida Wells, who have held it in good faith and with a title translative of property, and that the plea of prescription must prevail.

It is therefore ordered, adjudged, and decreed that plaintiff take nothing by this suit; that there be judgment in favor of defendant, decreeing them to be the owners of property described in plaintiff's petition, and they have and recover of the plaintiff the costs of the suit to be taxes.

ROBERT P. HUNTER, *Att'y-at-Law, Judge ad hoc.*

The district judge being recused, as having been of counsel.

94 *Minutes of the Court.*

J. M. WELLS, Jr., Public Adm'r,
vs.
F. M. & IDA F. WELLS. } No. 2159.

May 5th, 1875. Answer filed. Order appointing Jos. G. White curator *ad hoc* to represent Mrs. Mary E. Richards (Winn), absentee. At service of petition call of warranty allowed. Order authorizing wives to stand in judgment. Case cont'd for service.

May 8th, 1877. In this case his honor, Judge Blackman, recused himself; the case is referred to R. P. Hunter, Esq., a practicing attorney, for trial. Trial of the case set for Thursday, May 17th, 1877.

May 21, 1877. This case, being next on the docket, was called. Amended answer with call in warranty filed. Motion to strike out filed by plaintiff. Trial of motion set for trial May 22d. The name of R. P. Hunter, as counsel in the case, is stricken out, on his own motion.

95 May 23d, 1877. On trial of motion to strike out call in warranty, motion to strike out sustained, and call in warranty dismissed, June 8th, 1877.

R. P. HUNTER,
Recused Judge.

Judgment in favor of defendants, decreeing that plaintiff take nothing by this suit; decreeing defendants to be the owners of the property described in plaintiff's petition.

And they have and recover of plaintiffs costs of this suit.

On motion of plaintiff's counsel in open court, ordered, that an appeal be granted to plaintiffs, returnable to the next term of the supreme court, to be begun in New Orleans on the 2d Monday of February, 1878.

Appeal bond in the sum of $100.

It is agreed that the opinion of the court go up to the appellate court, & not a copy.

Minutes signed.

W. F. BLACKMAN,
Dist. Judge.
ROBT P. HUNTER,
Recused Judge.

96 Supreme Court of the State of Louisiana.

CLERK'S OFFICE,
NEW ORLEANS, *March 7th*, 1878.

J. MAT. WELLS, Jr., Executor,
vs.
FANNIE M. & IDA WELLS. } No. 7008.

Appeal from the 9th judicial district court for the parish of Rapides.

Mr. Justice Spencer delivered the opinion and decree of the court in

the words and figures following, to wit: Walter O. Winn died in 1860 without ascendants or descendants. By olographic will he left his wife, Mary E. Winn, universal heir and legatee, and appointed her executrix.

This will was duly probated, and she qualified as executrix. His estate was worth about half million of dollars, and his debt- about $120,000.

The widow took possession of the estate, and seems to have
97 dealt with it pretty much as her own from the death of her husband, in 1860 to 1870, when her attorney filed what purports to be an account of her administration.

In the fall of 1862 she sold to E. M. and Jefferson Wells for $20,000 cash, in Confederate money, one-fourth interest in the Lodi plantation in Rapides parish.

The sale was one by public act and duly recorded, and the purchaser went into immediate possession.

In 1874 E. M. and Jeff. Wells transferred the property so acquired to their wives, the defendants, as a *dation en paiement*, by public act. In 1864 the public buildings and offices of that parish were destroyed by fire, and we have only secondary evidence of the contents and nature of this title from Mrs. Winn to the vendees aforesaid. The present suit is brought by the plaintiff as public administrator and dative executor of Walter O. Winn, the widow having been destituted by decree court.

The object of the suit is to recover and restore to the estate
98 of Winn the fourth of said plantation so sold, and to annul the act of sale thereof, as having been made by the executrix without authority of law. The defence is that Mrs. Winn was the universal heir and legatee; that she accepted the succession unconditionally, disposed of its effects as owner, and that thereby the estate of Winn ceased to exist, and was lost by confusion in that of the heir.

Finally the defendants plead the prescription of ten years.

Under the view we have taken of the case it will be unnecessary to decide the question whether *whether* a sole heir or universal legatee, who has been named, appointed, and qualified as executor, can, by extra judicial acts of unconditional heirship and without having previously provoked his discharge as executor, terminate the existence of the succession of which he is heir and executor.

We think that, under the proofs in this record, the plea of prescription must prevail. In determining this question it is matter of no
99 moment whether Mrs. Winn was or not owner in law or fact, nor whether in law or fact she had a right to sell this property. If prescription could only be pleaded in favor of a party who had acquired from the true owner, or one having legal authority to sell, it would be a very useless right. The very object of this prescription is to quiet the titles of those who may have acquired from persons not owners and having no right to sell, "as happens to him," says Arts. 3451 C. C., who buys a thing which he supposes belongs to the person selling it to him, but which in fact belongs to another, again, Art. 3450 says, "By the term *just title*

in cases of prescription, we do not understandt hat which the possessor may have derived from the real owner, for then no prescription would be necessary, but a title which the possessor may have received from any person whom he honestly believed to be the real owner, provided the title were such as to transfer the property." Art. 3485, "By the phrase *transfer the property* we understand not such a title as shall have really transferred the property, but a title which to its nature, would have been sufficient to trans-
100 fer the property, provided it had been derived from the real owner, such as a sale exchanged," &c. So that the questions in this case are not whether Mrs. Winn was the owner, and had the right to sell the property, but whether the purchasers at the time of buying believed that she was owner, and whether the attempted transfer was sufficient *in terms and of nature* to transfer the property, had it emanated from the true owner.

If so, and if the defendants have possessed as owners under such transfer, peaceably, publicly, continuously, and unequivocally, for ten years before this suit was brought, the prescription title is complete. See C. C., 3453.

There is no doubt that Mrs. Winn did, in 1862, by public act duly recorded, sell and deliver to the defendants, E. M. & J. Wells, the land in controversy at the price of $20,000 cash. Both vendees swear that they *bona fide* believed her to be absolute owner, and knew nothing of her holding the position as executrix of the deceased husband, of whom she was heir. That she treated the prop-
101 erty as her own, and that they and their vendees have had peaceable, public, continuous possession as owners ever since.

The evidence is, we think, in the main, corroborated by that of Judge Ryan, who has for years, in fact, since Winn's death, been the attorney of the succession.

There is no proof to the contrary of their statements. There is no evidence to show that E. M. & J. Wells, at the time of their purchase, knew that Mrs. Winn was executrix.

It matters not what they knew afterwards, since it is sufficient if possession has commenced in good faith." C. C., 3448. "Good faith is always presumed in matters of prescription, and he who alleges bad faith in the possessor must prove it." C. C., 3447.

Citations were issued and served in this suit in April, 1876, more than thirteen years after the date of the sale in question.

The judgment below maintained the defendants' title, and is, we think, correct.

It is therefore ordered and decreed that the judgment ap-
102 pealed from be affirmed with costs.

The chief justice declined taking any part in the decision of this cause.

A true copy. FRANK WALL, *Dy Clerk.*

On Rehearing.

Supreme Court of the State of Louisiana.

J. Mat. Wells, Jr., Executor, *vs.* F. M. & Ida Wells. } No. 7008.

Clerk's Office, New Orleans, *May 23d*, 1878.

Appeal from the 9th judicial district court for the parish of Rapides.

Mr. Justice Marr delivered the opinion and decree of the court, in the words and figures following, to wit: The testimony in the record satisfies us that the title under which defedants hold the real property in question was protected by the prescription of ten years, and we affirmed the judgment of the district court in their
103 favor on that ground alone, pretermitting the expression of any opinion as to the right of Mrs. Winn, as executrix and universal legatee, under the will of her husband, to dispose of the property belonging to his succession by private sale.

It seems that we were in error as to date of the death of Walter O. Winn, which actually occurred in 1861 instead of 1860.

This is not material, because the sale under which defendants claim was made in 1862, and they were cited in this case in April, 1876. We do not propose to re-examine the question of prescription, because no suggestion has been made which induces us to doubt the title of defendants; and for the additional reason, that we think their title is not dependant on the lapse of time. The will on which the rights of Mrs. Winn depend, is as follows: "I, Walter O. Winn, make this my last will and testament. I appoint my beloved wife, Mary E. Winn, my executrix and universal legatee. I leave to her all the property, real and personal, of which I may die possessed or own."

104 There were no forced heirs, and no particular legacies; and by the terms of the civil code in such case, "the universal legatee, by the death of the testator, is seized of right of the effects of the succession without being bound to demand the delivery thereof." Article 1609 (1602).

It is true one cannot be held as heir, whether legal *ab intestato* or instituted by will, without having accepted that quality; but it is equally true that this acceptance may be either express or tacit.

It is equally obligatory and effectual in the one case as in the other.

"It is express when the heir assumes the quality of heir in an unqualified manner, in some authentic or private instrument, or in some judicial proceedings.

It is tacit when some act is done by the heir, which necessarily supposes his intention to accept, and which he would have no right to do but in his quality of heir." R. C. C., Art. 988.

Shortly after the death of her husband Mrs. Winn disposed of certain slaves of the succession by exchanging them for others. As heir,

universal legatee, she had a perfect right to do this; as executrix, she could have done no such thing.

105 In 1862 she sold the real property in question, by notarial act, to the authors of the title of defendants. As heir, universal legatee, absolute owner under the will, she had a perfect right, full power to do this; as executrix, she had no such power.

During the war Mrs Winn removed from Rapides parish to the State of Texas with the slaves and movable effects of the succession, and did not return to Louisiana until after the close of the war. As executrix, she could not have been permitted to take any part of the property beyond the limits of the jurisdiction of the probate court, certainly not beyond the limits of the State; as heir, owner, she could do what she pleased with her property.

On the return of Mrs. Winn from Texas suits were brought against her, in one of which, at least, that of Gasquet, she was charged as heir, universal legatee, and as having accepted, purely and simply, and in that quality judgment was rendered against her. This was the acceptance of the quality of heir in a judicial proceeding.

106 In 1867 Mrs. Winn made a donation to her mother of a plantation which belonged to the succession, and about that time she married and removed to another State with her husband.

In his reasons for judgment, the judge *ad hoc* states that the only voluntary appearance of Mrs. Winn and acknowledgment of her capacity as executrix was in 1870, when a petition was presented by her, or in her behalf, for the sale of certain lands of the succession in Madison parish.

In 1869 her attorney filed a tableau of debts at the instance of a creditor, and in 1874 proceedings were instituted to destitute her.

She was destituted of her office as executrix by decree of this court in 1875, upon the grounds that she had sold the property in question in the year 1862, and that she had ceased to be a resident of the State.

She was represented in that case by a curator *ad hoc*, and it does not appear from the report that the court considered or passed upon the fact that she was universal legatee.

107 The acts of Mrs. Winn are not equivocal, but when we consider that the succession of her husband was estimated at over $500,000, there can be no doubt as to her intention.

All her dealings with this succession shows, beyond doubt, that she had unqualifiedly, in authentic acts and in judicial proceedings, accepted the quality of heir, and she could not have resisted the demand of any creditor against her personally as heir.

In Duplessis *vs.* White, 6 An., 514, the executrix, who was also sole heir of the testator, sold real property of the succession at private sale. The court said: "Nothing prevented her from accepting the succession, purely and simply, and at once taking possession as heir. The fact of her selling the property in that capacity amounts to such an acceptance, and the mention in the act that she was executrix was immaterial, and effected neither her rights nor obligations, as heir, pure and simple.

The case of Bird *vs.* Succession of Jones, 5 Art., 643, is wholly dif-

ferent. By her will Mrs. Jones directed: 1st. "That all her just
108 debts be paid," "and if anything be left, I desire it to be disposed of as follows: 2d. I give and bequeath to Burwell Henderson Jones all the property which, by law, I have a right to dispose of, and make him my universal legatee. 3rd. I appoint Burwell Henderson Jones my executor, * * * and gave him seizure of my estate, and request him to see that *that* the intention herein expressed be carried out."

Jones qualified, and he compromised with the forced heirs. One of his creditors sought to subject the property of the succession to the payment of the debt. Jones answered that he had taken possession as executor, and held the property with the intention of paying the debts, and well knowing that only the residue, after such payment, belongs to him.

It is clear that he did not intend to accept as universal legatee; that he intended to administer as executor and to pay the debts of the succession as he was charged by the will to do, and that he could
109 not have acquired any right or title as universal legatee, except to such residuum as might be left after paying the debts of the succession, the first charge imposed upon him by the will, the injunction with which it closes.

It is therefore ordered that our decree heretofore pronounced in this case on the 7th March, 1878, remain undisturbed, and it is affirmed.

The chief justice recuses himself.

A true copy. FRANK WALL, *Dy Clerk.*

VOUCHER No. 25.

"Duplicate."

ALEXANDRIA, LA., *June 21st*, 1880.

Mr. J. Bowman, bought of Julius Levin, dealer in lumber and building materials.

1878.					
June 1st.	58 pieces	1 x 6, 18	522		
July 12th.		1 x 6, 18	478		
			1,000 feet		$10 00
1879.					
April 11th.	1 p.	$2\frac{1}{2}$ x 6, 18	23		
	2	1 x 12, 18	36		
	1	$1\frac{1}{2}$ x 4, 18	9		
26th.	55	1 x 6, 18	500		
			568, 12.50		7 10
					17 10
Ac. for 1880					6 25
					$23 35

110 $5,000. NEW ORLEANS, *March 30th*, 1860.

On the 10th November, 1860, after date, I promise to pay to the order of Messrs. Rotchford, Brown & Co., at the Louisiana State Bank, in this city, the sum of five thousand dollars, value received, with interest at the rate of eight per cent. per annum from date until paid.

W. O. WINN.

[Endorsed across the face:] *Ne varietur.* Secured by mortgage New Orleans, 30th March, 1860. S. Mayner, not. pub. This note admitted, and will be paid in due course of administration. May 9th, 1876. J. M. Wells, Jr., ad'r est. W. O. Winn.

(Endorsed:) ROTCHFORD, BROWN & Co.

I hereby acknowledge this note to be a debt due by the succession of Walter O. Winn, deceased, secured by mortgage on the property named in the act of mortgage, to wit, the plantation in Carroll parish, and I promise to pay the same in due course of administration.

Alexandria, La., 1st Nov., 1865.

MARY E. WINN.

[Endorsed across the face:] Filed in evidence January 11th, 1881. C. S. Ransdell, d'y clerk.

$5,000.00. NEW ORLEANS, *30th March*, 1860.

On the 10th November, 1860, after date, I promise to pay to the order of Mess. Rotchford, Brown & Co., at the Louisiana State Bank, in this city, the sum of *of* five thousand dollars, value received,
111 with interest at the rate of eight per cent. per annum from date until paid.

W. O. WINN.

[Endorsed across the face:] *Ne varietur.* Secured by mortgage. New Orleans, 30th March, 1860. S. Mayner, not. pub. This note admitted, & to be paid in due course of administration. May 9th, 1876. J. M. Wells, Jr., executor estate W. O. Winn.

(Endorsed:) ROTCHFORD, BROWN & Co.

I hereby acknowledge this note to be a debt due by the succession of Walter O. Winn, deceased, secured by mortgage on the property named in the acts of mortgage, to wit, the plantation in Carroll parish, and I promise to pay the same in due course of administration.

MARY E. WINN.

Alexandria, La., Nov. 1st, 1865.

[Endorsed across the face:] Filed in evidence January 11th, 1881. C. S. Ransdell, d'y clerk.

$5,000.00. NEW ORLEANS, *30th March*, 1860.

On the 10th November, 1860, after date, I promise to pay to the

order of Messrs. Ratchford, Brown & Co., at the Louisana State Bank, in this city, the sum of five thousand dollars, value received, with interest at the rate of eight per cent. per annum from date until paid.

W. O. WINN.

[Endorsed across the face]: *Ne varietur.* Secured by mortgage. New Orleans, 30th March, 1860. S. Mayner, not. pub. This note admitted & to be paid in due course of administration. May 9th, 1876. J. M. Wells, Jr., executor estate W. O. Winn.

(Endorsed:) ROTCHFORD, BROWN & Co.

I hereby acknowledge this note to be a debt due by the succession of Walter O. Winn, deceased, secured by mortgage upon the
112 property named in the act of mortgage, to wit, the plantation in Carroll parish, and I promise to pay the same in due course of administration.

MARY E. WINN.

Alexandria, La., Nov. 1st, 1865.

[Endorsed across the face]: Filed in evidence January 11th, 1881. C. S. Ransdell, d'y clerk.

$5,000.00. NEW ORLEANS, *30th March*, 1860.

On the 10th November, 1860, after date, I promise to pay to the order of Messrs. Rotchford, Brown & Co., at the Louisiana State Bank, in this city, the sum of five thousand dollars, value received, with interest at the rate of eight per cent per annum from date until paid.

W. O. WINN.

[Endorsed across the face:] *Ne varietur.* Secured by mortgage. New Orleans, 30th March, 1860. S. Mayner, not. pub. This note admitted & will be paid in due course of administration. May 9th, 1876. J. M. Wells, Jr., executor estate W. O. Winn.

(Endorsed:) ROTCHFORD, BROWN & Co.

I hereby acknowledge this note to be a debt due by the succession of Walter O. Winn, deceased, secured by mortgage upon the property named in the act of mortgage, to wit, the plantation in Carroll parish, and I promise to pay the same in due course of administration.

MARY E. WINN.

Alexandria, La., 1st November, 1865.

[Endorsed across the face:] Filed in evidence January 11th, 1881. C. S. Ramsdell, d'y clerk.

113 $5,000.00. NEW ORLEANS, *30th March*, 1860.

On the 10th December, 1860, after date, I promise to pay to the order of Messrs. Rotchford, Brown & Co., at the Louisiana State Bank, in this city, the sum of five thousand dollars, value re-

ceived, with interest at the rate of eight per cent. per annum from date until paid.

W. O. WINN.

[Endorsed across the face:] Filed in evidence. *Ne varietur.* Secured by mortgage. New Orleans, 30th March, 1860. S. Mayner, not. pub. This note acknowledged to be paid in due course of administration. May 9th, 1876. J. M. Wells, Jr., executor est. W. O. Winn.

(Endorsed:) ROTCHFORD, BROWN & Co.

I hereby acknowledge this note to be a debt due by the succession of Walter O. Winn, deceased, secured by mortgage on the property named in the act of mortgage, to wit, the plantation in Carroll parish, and promise to pay the same in due course of administration.

MARY E. WINN.

Alexandria, La., 1st Nov., 1865.

[Endorsed across the face:] Filed in evidence January 11th, 1881. C. S. Ransdell, d'y clerk.

$5,000.00. NEW ORLEANS, *30th March,* 1860.

On the 10th December, 1860, after date, I promise to pay to the order of Messrs. Rotchford, Brown & Co., at the Louisiana State Bank, in this city, the sum of five thousand dollars, value received, with interest at the rate of eight per cent. per annum from date until paid.

W. O. WINN.

[Endorsed across the face:] *Ne varietur.* Secured by mortgage. New Orleans, 30th March, 1860. S. Mayner, not. pub. This note admitted & to be paid in due course of administration. May 9th, 1876. J. M. Wells, Jr., executor estate W. O. Winn.

114 (Endorsed:) ROTCHFORD, BROWN & Co.

I hereby acknowledge this note to be a debt due by the succession of Walter O. Winn, deceased, secured by mortgage upon the property named in the act of mortgage, to wit, the plantation in Carroll parish, and I promise to pay the same in the course of administration.

MARY E. WINN.

Alexandria, La., 1st Nov., 1865.

[Endorsed across the face:] Filed in evidence January 11th, 1881. C. S. Ransdell, d'y clerk.

$5,000.00. NEW ORLEANS, *30th March,* 1860.

On the 10th December, 1860, after date, I promise to pay to the order of Messrs. Rotchford, Brown & Co., at the Louisiana State Bank, in this city, the sum of five thousand dollars, value received, with interest at the rate of eight per cent. per annum from date until paid.

W. O. WINN.

[Endorsed across the face:] *Ne varietur.* Secured by mortgage.

New Orleans, 30th March, 1860. S. Mayner, not. pub. This note admitted and to be paid in due course of administration. May 7th, 1876. J. M. Wells, Jr., executor estate W. O. Winn.

(Endorsed:) Rotchford, Brown & Co.

I hereby acdnowledge this note to be a debt due by the succession of Walter O. Winn, deceased, secured by mortgage upon the property named in the act of mortgage, to wit, the plantation in Carroll parish, and I hereby promise to pay the same in due course of the administration.

MARY E. WINN.

Alexandria, La., Nov. 1st, 1865.

[Endorsed across the face:] Filed in evidence January 11th, 1881. C. S. Ransdell, d'y clerk.

115 $5,000.00. New Orleans, *30th March*, 1860.

On the 10th December, 1860, after date, I promise to pay to the order of Messrs. Rotchford, Brown & Co., at the Louisiana State Bank, in this city, the sum of five thousand dollars, value received, with interest at the rate of eight per cent. per annum from date until paid.

W. O. WINN.

[Endorsed across the face:] This note admitted, & to [be] paid in due course of administration. May 9th, 1876. J. M. Wells, Jr., executor estate W. O. Winn. *Ne varietur.* Secured by mortgage. New Orleans, 30th March, 1860. S. Mayner, not. pub.

(Endorsed:) Rotchford, Brown & Co.

I hereby acknowledge this note to be a debt due by the succession of Walter O. Winn, deceased, secured by mortgage upon property named in the act of mortgage, to wit, the plantation in Carroll parish, and promise to pay the same in due course of administration.

MARY E. WINN.

1st November, 1865.

[Endorsed across the face:] Filed in evidence January 11th, 1881. C. S. Ransdell, d'y clerk.

$5,000.00. New Orleans, *30th March*, 1860.

On the 10th December, 1860, after date, I promise to pay to the order of Messrs. Rotchford, Brown & Co., at the Louisiana State Bank, in this city, the sum of five thousand dollars, value received, with interest at the rate of eight per cent. per annum from date until paid.

W. O. WINN.

[Endorsed across the face:] *Ne varietur.* Secured by mortgage. New Orleans, 30th March, 1860. S. Mayner, not. pub. This note admitted, and to be paid in due course of administration. May 9th, 1876. J. M. Wells, Jr., executor estate W. O. Winn.

116 (Endorsed:) ROTCHFORD, BROWN & Co.

I hereby acknowledge this note to be a debt due by the succession of Walter O. Winn, deceased, secured by mortgage on the property named in the act of mortgage, to wit, the plantation in Carroll parish, and I promise to pay the same in due course of administration.

MARY E. WINN.

Alexandria, La., 1st November, 1865.

[Endorsed across the face:] Filed in evidence January 11th, 1881. C. S. Ransdell, d'y clerk.

Succession of WALTER O. WINN. No. 40.

To the honorable the judge of the parish court in and for the parish of Rapides, Louisiana:

The petition of Mary E. Winn, now Richards, the executrix of Walter Winn, whose succession was opened in this honorable court, and all the records belonging thereto destroyed by fire in May, A. D. 1864, at which time the court-house of this parish was likewise destroyed by fire, with respect, files herewith a tableau of debts due by the said succession, and prays that the same be advertised for thirty (30) days, as the law directs, after which it be confirmed and homologated and the funds ordered to be distributed in accord-

117 ance therewith. Petitioner prays for general relief, &c.

RYAN & WHITE, *Att'ys.*

Filed April 19th, 1869.

J. H. C. BARLOW,
Parish Judge.

118 *Tableau of Debts.*

Succession of WALTER O. WINN.

Privilege claims:

1.	Law charges.	
2.	Mrs. Mary E. Richards.	
"	Executrix commission, 8——, @ 2½ per cent.	
3.	Clerk costs.	
4.	Sheriff's costs.	
5.	M. Ryan, attorney, for note dated January, 1866, 8 per cent. interest from date, now held by Messrs. Laren & Provost	5,000 00
6.	Messrs. Ryans & White, att'y	2,000 00
7.	J. H. C. Barlow	1,000 00
8.	Dr. E. B. Price, last illness	50 00

Mortgage claims:

W. A. Gasquet, judgment in suit No. 373 in dist. c't, Rapides parish, mortgag- on lands in Carroll parish, with 8 per cent. int. from 8 Mar., 1860, & costs, for		5,000 00

Ordinary claims:

John H. Ransdell, W. tutor, judg't in suit No. 140, dist. court, Rapides parish, 8 per cent. int. from Jan'y 4, 1860, & costs, for		285 00
119	John S. Tarver, judgment in suit No. 153, dist. court, parish Rapides, with 5 per cent. int. from 1st March, 1861, and costs both courts	2,669 48
Mis- Hartwell P. Williamson, now owner of a judg't in suit No. 65, dist. court, Rapides parish, with 8 per cent. int. from 23 May, 1866		1,548 00
John Bagan, adm't'r, judg't in suit No. 361, dist. court, Rapides par., with 8 per cent. [int.] from 1st Jan'y, 1860, for		1,130 00
William Haskins, judg't in suit No. 860, dist. court, Rapides parish, with — per cent. int. from ———, & costs, for.		
Calvin N. Hines, protested draft		100 00
John Deuer, open ac.		40 75
M. A. Grogan, do.		88 84
J. M. Sollibellas, note, with 5 per cent. int. from March 15, 1857; cr. by $1,000, Mar. 15, 1860		4,000 00
J. N. Rhuer, open ac.		29 00
Mrs. M. McIntosh, note, 8 per cent. [int.] from 10 Nov., 1857, until paid		200 00
Grey & Rosenthal, open ac.		309 00
Jacob Spreigle, do.		24 00
Dr. Gerge A. French, do.		350 00
Daniel Pratt, do.		280 70
Dr. W. A. Hardy, do.		66 40
Dr. L. Magruder		37 50
C. W. Boyce		195 00
	Forward, over.	
120	Isaac Levy's succession	77 50
	Joseph McEvoy	30 00
Henry P. Osborn		285 30
Mess. W. H. Letchford & Co., holders of a protested draft by deceased on Rotchford, Brown & Co., dated Dec. 19, '59, 5 per cent. int. from date		1,400 00
Susan Archinard, note for		100 00
Dr. E. B. Price, medical bill, open ac.		900 00
Dr. A. Cockerell		160 00

Let the petition be filed, and let the advertisement be made and the notice given, as herein prayed for, and according to law.

This done and signed at chambers, on this the 19th day of April, 1869.

J. H. C. BARLOW,
Judge of the Parish Court.

121 No. 40. Probate Docket. District Court, Rapides Parish, Louisiana.

Succession of WALTER O. WINN.

On opposition of John D. Dubose to provisional account of J. M. Wells, Jr., public administrator. Filed July 15th, 1880.

"Testimony."

Mrs. MARY E. RICHARDS sworn, says:

"Exception.—The counsel for John S. Mayfield appeared and offered the following exception:"

Now comes John S. Mayfield and files this exception to taking the testimony of Mrs. Richards, formerly Winn, or any further proceedings in this case, on the following grounds:

That the claim of John S. Mayfield against the estate of Winn having been duly acknowledged in accordance with law by the administrator of said estate and placed by him upon the tableau of distribution, the opposition of J. D. Dubose is an attack upon the validity of said claim, and said Mayfield should have therefore been made a party to said proceedings, and he should have been
122 duly cited to defend his rights, which has not been done. He therefore excepts to any proceedings in the said opposition as *ex parte*, and can, therefore, in law have no effect against him.

Attest: C. L. RANSDELL, *D'y Clerk.*

Mrs. RICHARDS says:

Question. Have you examined the copies of the nine notes made payable to Rotchford, Brown & Co., with your endorsement thereon, on file in these proceedings?

Answer. I have.

Question. Will you please state when and where these notes were presented to you for your acceptance.

Question and answer objected to by counsel of John S. Mayfield, on the following grounds:

The validity of the said Mayfield claim against the estate of Winn has been twice contested—once with the executrix, the said Mrs. Winn, representing all the creditors of the said estate—upon the same grounds as are alleged in this opposition, and decided by the supreme court that the claims were valid and not prescribed; it is, therefore, *res adjudicata.*

123 On the further grounds that Mrs. Richards cannot be heard as a witness is to establish the plea of prescription against Mayfield's claim, she having, in her official capacity as executrix, acknowledged said claim in writing to be a valid and legal debt due by said estate of Winn before prescription had accrued thereon. She cannot, therefore, as a witness, deny or contradict her official acts therein, as it would be in effect to prove by herself that she had perpetuated a fraud upon the creditors of the estate of Winn by her acknowledgment of said claim as a just and legal debt of said estate,

if it was prescribed at the date of her said written acknowledgment.

Attest: C. L. RANSDELL, *D'y Clerk.*

Objection.

And now comes J. Madison Wells, Jr., public administrator, who objects to the question and answer on the following grounds:

That a party cannot be heard to contradict her own judicial admissions.

Attest: C. L. RANSDELL, *D'y Clerk.*

124 *"Answer."*

Mrs. RICHARDS says:

They were presented to me for my acceptance at the St. Charles Hotel, in the city of New Orleans, between the first and the tenth of January, 1866; it was there that I signed the acknowledgement, which purports to be signed by me on the 1st day of November, 1865, at Alexandria, Louisiana.

I know these facts, because I was in Texas in November, 1865, and did not return here to Alexandria until subsequent to the 25th day of December, 1865, where I remained several days, and went to New Orleans; it was then first the notes were presented to me, and I signed the acceptance, which was the first and only time I ever saw them. At the time that I signed the acknowledgement on these notes I did not read it over, did not notice either the language or the dates. My father brought the notes to me, or perhaps Mr. Brown was with my father, when I was sent for by my father to come
125 down to the parlor of the St. Charles Hotel to sign some notes, which I did, without explanation or having the endorsement read to me, as my father declared to me at the time that Mr. Brown would seize the property unless I did so.

MARY E. RICHARDS.

Sworn to & subscribed before me, this October 2nd, A. D. 1880.

C. L. RANSDELL, *D'y Clerk.*

STATE OF LOUISIANA, *Parish of Rapides:*

I, C. L. Ransdell, d'y clerk 12th district court, Rapides parish, Louisana, do hereby certify that the foregoing testimony of Mrs. Mary E. Richards was taken before me, after due notice had been given to J. M. Wells, Jr., public administrator, on this October 2d, 1880.

C. L. RANSDELL, *D'y Clerk.*

Filed October 2d, 1880.

C. L. RANSDELL, *D'y Clerk.*

Filed in evidence January 11th, 1881.

C. L. RANSDELL, *D'y Clerk.*

To the judge of the parish court in and for the parish of Rapides, State of Louisiana:

The petition of John S. Mayfield, a resident of the city of New Orleans, shows your court that — is a creditor of the succession of Walter O. Winn for the amount of nine promissory notes, each drawn to the order of Rotchford, Brown & Co. by said Winn on the 30th day of March, 1860, and for the sum of five thousand dollars, with eight per cent. interest from date, four of the said notes being payable on the 10th day of November, 1860, and five of them on the 10th day of December, 1860.

Petitioner further represents that the said notes have been transferred to him for a valuable consideration. He further shows your court that the said Walter O. Winn died some years ago in your parish, leaving a large and valuable estate, and his succession was opened in your said parish, and his surviving widow, Mrs. Mary E. Winn, was appointed and qualified as executrix of his estate.

Petitioner further represents that the aforesaid notes were
127 presented to said executrix for payment on the first day of November, 1865, and that she acknowledged said notes and promised to pay the same in the course of administration, as will be fully shown by the written acknowledgement upon said notes.

Petitioner further represents that, notwithstanding said acknowledgement, the said executrix has failed to pay any portion of the said notes, or to file in your court any account of her administration, or to take any steps for the settlement of the said succession.

Petitioner further shows that since her appointment as executrix the said Mary E. Winn has married Mr. A. Kean Richards, and has removed from your parish of Rapides, and she has left no agent here authorized for the purpose of having service made upon her as executrix aforesaid.

Petitioner further represents that the said executrix and her said husband are temporarily in the parish of Carroll or of Madison.

Wherefore petitioner prays that the said Mary E. Richards be ordered to file an account of her administration of the succession of Walter O. Winn, in ten days after the service of this petition,
128 to show if she has funds sufficient to pay the claim of petitioners; and if she has not funds to pay said claim, that she be ruled to show cause why she should not sell a sufficient amount of the property of said succession for cash to pay said claim.

Petitioner further prays that a citation and copy of this petition and the order of your court be sent to the sheriff of the parish of Carroll, and of the parish of Madison, to make service on the said Mary E. Richards; and that her said husband, A. Kean Richards, be also cited to aid and assist his said wife, and for general relief.

R. A. HUNTER,
Attorney for Petitioner.

Parish court, parish of Rapides, La. Filed May 10th, 1870.
CHARLES OWEN, *D'y Clerk.*

Order.

The foregoing petition and the notes and acknowledgement of said executrix being considered, it is therefore ordered that
129 Mary E. Richards file an account of her administration as executrix of the succession of Walter O. Winn, within ten days after service of this petition and order; and in the event that there are not sufficient funds on hand to pay said claim, that she be ordered to show cause why a sufficient amount of the property of said succession should not be sold to pay said claim.

Done and signed in chambers, May 9th, 1870.

J. KELSOE, *Parish Judge.*

Alias Citation.

STATE OF LOUISIANA, *Parish of Rapides:*

Parish Court.

To Mary E. Richards, executrix of succ'n — W. O. Winn, of the parish of Carroll or Madison:

JOHN S. MAYFIELD
vs.
MARY E. RICHARDS, Executrix Succ'n of W. O. Winn and her husband, A. KEAN RICHARDS. } No. 40.

You are hereby cited to appear in the office of the clerk of said court, in the town of Alexandria, in the parish aforesaid, and
130 comply with the demand contained in the petition of John S. Mayfield, of which a copy accompanies the citation, or deliver your answer thereto in writing in said office in ten (10) days after the service hereof, with one additional day for every ten miles between your residence and the office of the clerk.

Witness the Honorable John Kelso, judge of said court, this 27th day of July, 1870.

C. V. LEDOUX, *D'y Clerk.*

The above citation, with a certified copy thereof, and of petition, were received by the sheriff of the parish of Carroll, the 7th day of May, A. D. 1870, and the original return of service was made to the parish court of the parish of Rapides in due form, and I am informed that the same has been lost in course of transportation, having been sent by mail.

J. W. DRAUGHON,
Sheriff of the Parish of Carroll.

Personal Service.

On the 18th day of May, A. D. 1870, I made service of the copies of petition and citation above mentioned, by delivering
131 them to Mary E. Richards in person, at the Transylvania

plantation, in said parish and State, about 12 miles from the court-house, in Carroll parish.

J. W. DRAUGHON, *Sheriff*,
By SAMUEL CLAPP, *D'y Sh'ff.*

Service at Domicil.

On the 18th day of May, A. D. 1870, I made service of the copies of petition and citation above mentioned on —— at the usual place of domicil or residence of said ———, situated in the parish of Carroll, about —— miles from the court-house of said parish, by delivering them to a person apparently above the age of fourteen years, whose name [is] ———, and who was at the time living in the house of the said ———, ——— being absent.

——— ———,
Sheriff Parish Court, Parish of Rapides.

Returned and filed August 29th, 1870.
C. V. LEDOUX, *D'y Clerk.*

STATE OF LOUISIANA, *Parish of Rapides:*

—— Court.

132 To A. Kean Richards, husband of Mary E. Richards, executrix of the succ'n of W. O. Winn, of the parish of Carroll or Madison:

JOHN S. MAYFIELD
vs.
MARY E. RICHARDS, Ex'x of Succ'n W. O. Winn. } No. 40.

You are hereby cited to appear in the office of the clerk of the said court, in the town of Alexandria, in the parish aforesaid, and comply with the demand contained in the petition of John S. Mayfield, of which a copy accompanies the citation, or deliver your answer thereto in writing in said office in ten (10) days after the service thereof, with one additional day for every ten miles between your residence and the office of the clerk.

Witness the Honorable John Kelso, judge of said court, this 27th day of July, 1870.

C. V. LEDOUX, *D'y Clerk.*

The above citation, with a certified copy thereof, and of petition, were received by the sheriff of the parish of Carroll the 7th day of May, A. D. 1870, and the original return of service was made
133 to the parish court of the parish of Rapides in due form, and I am informed that the same has been lost in course of transportation, having been sent by mail.

J. W. DRAUGHON,
Sheriff of the Parish of Carroll.

Personal Service.

On the 18th day of May, A. D. 1870, I made service of the copies of petition and citation above mentioned by delivering them to A. Kean Richards in person, at the Transylvania plantation, in said parish and State, about 12 miles from the court-house in Carroll parish.

J. W. DRAUGHON, *Sheriff*,
By SAMUEL CLARK, *D'y Sh'ff.*

Service at Domicil.

On the —— day of ——, A. D. 187–, I made service of the copies of petition and citation above mentioned on ——, at the usual place of domicil or residence of said ——, situated in the parish of Carrol, about —— miles from the court-house of said parish, by delivering them to a person apparently above the age of fourteen years,
134 whose name ——, and who was, at the time, living in the house of the said ——, —— being absent.

——— ———, *Sheriff.*

Parish court, parish of ——. Returned and filed August 29th, 1870.

C. V. LEDOUX, *D'y Clerk.*

To the honorable the Parish Judges of the parish of Rapides, holding session in and for said parish and State of Louisiana:

The petition of John Mayfield, a resident of the State of Texas, respectfully represents that he is a creditor of Walter O. Winn, dec'd, for a large amount; that in 1870 petitioner filed a rule upon Mrs. Mary E. Richards, executrix, to file an account of the administration, and obtained an order in March commanding her to file an account on or before the May, 1871. That the said executrix refused to obey said order, and in Sept., 1871, petitioner obtained an order from the probate court that she be arrested and imprisoned until she obey said order; said court also ordained said
135 petitioner to bring suit to destitute her from said executorship.

Petitioner further represents that said Mary E. Richards left the State some time about the year 1866, and went with her husband, Keen Richards, to the State of Kentucky, where they have continued to reside, and petitioner has in consequence been frequently unable to secure any process of court upon her, and whenever such process has been served, it has been when she was temporarily in the State of Louisiana.

Petitioner further represents that the said executrix, notwithstanding her frequent, long, and continued absence from the State, has never left any recorded power of attorney in the said parish of Rapides, and petitioner and other creditors have been frequently unable to get any process of court served upon her, and when they

have succeeded in having any such process served, it has been at great expense and interminable delay.

Petitioner further represents that the said executrix, although she has been administering said succession of W. O. Winn since 1862, and that the property of said succession was inventoried
136 at over half a million dollars, has never filed an account of said succession showing its condition, or what disposition she has made of said property or paid any of the creditors of Walter O. Winn.

Petitioner further represents that the said executrix has disposed of two of the plantation- at private sale, without an order of court, and contrary to her duty and in fraud of the rights of the creditors.

Petitioner further represents that the said executrix, by failing to file an account of her administration every twelve months, as the act of 1837, S. C., requires, and especially refusing to obey the order of the court, and by her absence and maladministration of said succession has forfeited her *æ*right to act as executrix.

Wherefore petitioner prays that a curator *ad hoc* be appointed to represent the said absent executrix and her husband, and that the said Mary E. Richards, in her capacity of executrix, and her husband, Keene Richards, may be cited through said curator or personally if they can be found, to answer this petition, and after due proceedings that she be destituted as executrix of said succession and for best and general relief.

R. A. HUNTER,
Att'y for Petitioner.

137 Parish court, parish Rapides, La. Filed April 9th, 1874.
CHARLES OWEN, *D'y Clerk.*

Order that Mr. Ryan, att'y-at-law, be appointed curator *ad hoc* to represent the defendant in the above suit.

C. V. LEDOUX, *Parish Judge.*

No. 40. Parish Court, Parish of Rapides. September Term, A. D. 1873.

Succession of WALTER O. WINN.

Application for destitution of executrix, and appointment J. M. Wells, public administrator, dative testamentary executor.

This case coming on for trial according to assignment, and the law and the evidence being in favor of the plaintiff, it appearing to the court that the executrix having failed to file an account of her administration as required by law, and even to obey an order of the court when ordered to file said account, and it also appearing to the court that the said executrix often left the State without
138 leaving any agent as required by law, so that it was impossible for the court to enforce its orders, it is therefore ordered, adjudged, and decreed that Mary E. Richards, executrix, be destituted from said executorship of the estate of Walter O. Winn, and

that J. M. Wells, Jr., in his capacity of public administrator, be appointed dative testamentary executor of the said succession.

It is further decreed that Mary E. Richards pay the costs of suit.

This done and signed in open court on the 26 of Sept., 1873.

C. V. LEDOUX, *Par. Judge.*

Filed September 30, 1873.

CHS. OWEN, *D'y. Clerk.*

District Court, Parish of Rapides, Louisiana.

JOHN D. DUBOSE
vs.
WALTER O. WINN'S EXECUTRIX. } Record No. 1115.

To the honorable the judge of the ninth judicial district of Louisiana, sitting in and for the parish of Rapides:

139 The petition of John D. Dubose, a resident of the parish of Pointe Coupee, shows the court that Walter O. Wynn, deceased, whose domicil was your parish of Rapides, where his succession has been opened, is indebted to petitioner in the sum of three thousand dollars, with five per centum per annum from the 1st day of January, 1861, subject to a credit of fifteen hundred dollars, paid July 22d, 1863.

Petitioner further shows that by last will of W. O. Winn, duly admitted to probate in Rapides parish, his widow, Mary E. Winn, was appointed executrix thereof, and was also constituted universal heir, and that she qualified in the former capacity, and accepted the testamentary heirship. She is now the wife of R. Keene Richards, both of whom reside in the parish of ——, Louisiana.

Amicable demand proving unavailing, petitioner prays that Mary E. Richards be cited to answer hereto in both capacities of executrix and heiress of Walter O. Winn, and that her present husband be also cited that he may aid and authorize his wife in the
140 defense hereof, and after delay, that petitioner have judgment against the Mrs. Richards in her aforesaid capacities for the sum, with interest as claimed set forth herein, subject to the credit acknowledged, and for costs. He prays for general relief.

MANNING,
Atto. for P. F. V.

District court, parish of Rapides. Filed December 10th, 1867.
J. W. HICKMAN, *Clerk.*

I accept service and citation for both defendants. Dec. 9th, 1867.
M. RYAN,
Att'y for Defendant.

$3,000. On the first day of Januáry next (1861) I promise to pay to John D. Dubose, or bearer, three thousand dollars for value received.

W. O. WINN.

Alexandria, La., April 23rd, 1860.

Rapides, La., district court, parish Rapides. Filed Dec. 10th, 1867.
J. W. HICKMAN, *Clerk.*

"Endorsed:" Rec'd on the within note fifteen hundred dollars. July 22d, 1863. Jno. D. Dubose.

141 STATE OF LOUISIANA:

Ninth Judicial District Court, Parish of Rapides. May Term, 1872.

JOHN D. DUBOSE
vs.
WALTER O. WINN'S EXECUTRIX. } No. 1115.

In this cause, by reason of the law and the evidence being in favor of the plaintiff, Jno. D. DuBose, it is ordered, adjudged, and decreed that said plaintiff have and recover of *of* the defendant, Mary E. Richards, in her capacity of executrix of Walter O. Winn, deceased, the sum of three thousand dollars, bearing five per centum per annum interest from the first day of January, 1861, subject to a credit of fifteen hundred dollars paid on July 22, 1863, and cost of suit.

Done, read, and signed in open court, on this 22d day of July, 1872.
J. OSBORN, *District Judge.*

Filed May 22, 1872.
CHARLES OWEN, *D'y Clerk.*

142 *Minutes of the Court.*

JOHN D. DUBOSE
vs.
W. O. WINN'S EXECUTRIX. } No. 1115.

Feb'y 18th, 1867. Recused.
November 5th, 1868. Default.
December 5th, 1871. Continued.
May 8th, 1872. Judgment favor of plaintiffs & against defendants for $3,000.00 5 p. c. interest from January 1st, 1861, subject to a credit of $1,500 paid July 22d, 1863, & costs.

Minutes signed: JOHN OSBORN, *Dist. Judge.*
R. J. BOWMAN,
Att'y at Law, Selected to Try Rec'd Case.

Petition of William B. Gasquet.

Record No. 373, District Court, Parish of Rapides, Louisiana.

To the Hon. Wm. B. Lewis, judge of the ninth judicial district, State of Louisiana, parish of Rapides:

143 The petition of William A. Gasquet, of the city of New Orleans, respectfully shows the court that Mary E. Winn, widow of Walter Overton Winn, deceased, of the parish of Rapides, is justly indebted to your petitioner in the sum of five thousand dollars ($5,000.00), with interest thereon at the rate of eight per cent.

per annum from the 30th of March, 1860, until paid, for this, that her deceased husband, Walter O. Winn, in his lifetime, made and executed his certain promissory note, hereto annex-, whereby he did, on the 30th day of March, 1860, at New Orleans, promise to pay to the order of Rotchford, Brown & Co. the said sum of five thousand dollars on the 10th day of November, 1860, with interest as aforesaid, and said Rotchford, Brown & Co. transferred the same to your petitioner, for value, and before maturity thereof.

Petioner further shows that the said Mrs. Mary E. Winn became by the will of her husband his universal heir and legatee, and has accepted the same, and is in possession of his estate, and uses and administers the same as her own, and as she has a right to do, subject to the payment of his debts, and which have now become
144 her debts, and that she owes the said amount to him, with the interest as aforesaid.

Petitioner further shows that to secure the payment of the said note, and all interest that might accrue thereon, the said Walter O. Winn made and executed a certain act of mortgage before J. Magnera, notary public, of New Orleans, on said 30th day of March, 1860, and two competent witnesses, on certain lands in the parish of Carroll, State of Louisiana, and a duly certified copy whereof will be presented to the court on the trial of this cause.

Petitioner further prays that the same be duly recognized in favor of the petitioner and made executor, and that the property mortgaged, except slaves, be sold to satisfy the same, and interests and costs, &c.

Petitioner avers ineffectual amicable demand, and annexes hereto the note of said Walter O. Winn.

The premises considered, petitioner prays due citation to issue to said Mrs. Winn, and process, and, after due proceeding, that judgment be rendered in his favor for the said sum of five thousand dollars, with interest as aforesaid, and costs; and, further, that
145 petitioner's rights of mortgage for the payment of the same be recognized & declared executory, and that the mortgaged property (except slaves) mentioned in the said act of mortgage be seized and sold to satisfy the judgment rendered in this case; and they pray all further and other equitable and general relief.

HYAMS & JONAS, *Att'ys.*

Dist. court, parish of Rapides. Filed May 9th, 1866. W. W. Whittington, Jr., clerk.

PARISH OF RAPIDES, *May* 8, 1866.

I accept service of the foregoing petition and wa-ve citation.

M. RYAN,
Att'y for Mrs. Winn.

$5,000; In'st, 253.30. NEW ORLEANS, 30 *March*, 1860.

On the 10th November, 1860, after date, I promise to pay to the order of Messrs. Rotchford, Brown & Co., at Louisiana State Bank, in this city, the sum of five thousand dollars, value received, with

interest at the rate of eight per cent. per annum from date until paid.

(R. R. 469.) W. O. WINN.

[Endorsed across face in red ink:] *Ne varietur.* Secured by mortgage. New Orleans, 30 March, 1860. F. Mayner, Not. Pub.

146 This note endorsed:

Protest waived.

ROCTHFORD, BROWN & CO.

I herein acknowledge the note to be a debt due by the succession of Walter O. Winn, deceased, secured by mortgage upon the property named in the act of mortgage, to wit, the plantation in Carroll parish, and I promise to pay the same in due course of administration.

MARY E. WINN.

ALEXANDRIA, LA., 18 *November*, 1865.

Dist. court, parish of Rapides. Filed May 9th, 1866.

W. W. WHITTINGTON, JR.,
D'y Clerk.

J. GASQUET
vs.
MARY E. WINN. } No. 373.

To the honorable the judge of the ninth judicial district of Louisiana, sitting in and for the parish of Rapides:

Plaintiff in this suit shows the court that since the institution thereof the defendant has intermarried with A. Keene Richards, who resides in the parish of your State.

He prays, therefore, that the husband be made a party
147 hereto, and that citation and copy of this petition, as well as the original petition, be served upon him.

MANNING,
Att'y for Deff.

Service accepted May 13th, 1867.

RYAN & WHITE, *Att'ys.*

Filed May 16th, 1867.

J. W. HICKMAN, *Clerk.*

W. A. GASQUET
vs.
MARY E. WINN. } 373. Note of Evidence.

Plaintiff offers, 1st. Note sued on.

M. RYAN, sworn, says: That the signature of Walter O. Winn to the note is genuine. Winn is dead. Resided in this parish where his succession was opened; the mortuary proceedings were had in this parish. Defendant was made by his will his universal heir. All the papers of the succession were burned in the conflagration of

May, 1864; the signature of def't on the back of the note is genuine; the signature of Rotchford, Brown & Co. on the back of the note is genuine, marked A.

2d. Copy of mortgage marked "B," (the copy of mortgage is not now on record.—Cl'k).

148 I certify the above evidence to be taken in open court. March 2d, 1868.

J. W. HICKMAN, *Clerk.*

State of Louisiana, Parish of Rapides, Ninth Judi'l Dist. Court. March Term, 1868.

WILLIAM A. GASQUET
vs.
MARY E. RICHARD, heir and Executrix of Walter O. Winn, dec'd and her husband, A. Keene Richards. } No. 373.

In this cause, by reason of the law and the evidence being in favor of the plaintiff, William A. Gasquet, it is ordered, adjudged, & decreed that he have and recover of the defendant, Mary E. Richards, universal heir and executrix of Walter O. Winn, deceased, the sum of five thousand dollars, with interest at the rate of eight per centum per annum, from the thirtieth day of March, 1860, and cost of suit to be taxed.

And it is further ordered, adjudged, and decreed that there exists a special mortgage in favor of plaintiffs for the payment of this judgment upon the following-described tract of land, situated in the parish of Carroll and State of Louisiana, in township
149 eighteen north, range thirteen east, being a cotton plantation, viz: Section fifty-one, containing six hundred and fourteen $\frac{56}{100}$ acres; section forty-six, containing six hundred and thirty-seven $\frac{40}{100}$ acres; the south $\frac{1}{2}$ of section forty-three, containing three hundred and twenty-one $\frac{60}{100}$ acres; the southwest $\frac{1}{4}$ of section forty-two, containing one hundred and sixty $\frac{80}{100}$ acres; the west half of section forty-seven, containing three hundred and twenty-one $\frac{80}{100}$ acres; section No. fifty-three, containing six hundred and forty-six $\frac{16}{100}$ acres; section fifty-two, containing six hundred and thirty-eight $\frac{28}{100}$ acres; section forty-eight, containing six hundred and thirty-seven $\frac{40}{100}$ acres; lots numbers five, six, and seven, containing seventy-four $\frac{19}{100}$ acres, in section number forty-nine; fractional section number fifty, containing two hundred and fifty-four $\frac{50}{100}$ acres, being the whole of the aforesaid plantation, together with all the buildings and improvements thereon, including the cotton-gin, mills, machinery, agricultural implements, cattle, mules, horses, and stock thereon.

And it is further ordered, adjudged, and decreed that the
150 aforesaid plaintiff have and recover of the aforesaid defendant five per centum upon the amount of the above judgment as lawyer's fees or commissions, as stipulated to be paid by Winn in the act of mortgage, of date thirtieth March, 1860; and that for the payment of this percentage or commission the mortgage aforesaid

on the plantation and improvements and other property is hereby executory.

Done and signed in open court, on the 9th day of March, A. D. 1868.

W. B. LEWIS,
Judge Ninth Dist. Court.

Filed March 7th, 1868. W. W. WHITTINGTON, Jr.,
D'y Clerk.

Minute of the Court.

Wm. A. Gasquez
vs.
Mrs. Mary E. Winn. } No. 373.

Oct. 11th, 1866, judgment by default.
Oct. 16th, 1866, continued.
May 7th, 1867, continued.
May 17th, 1867, supplemental pet't'n.
July 2d, 1867, continued.
Feb'y 19th, 18-9, set for 2 Saturday.
March 2, 1869, judgment for plaintiffs. See decree.
Minutes signed: W. B. LEWIS, *Dist. Judge.*

151 *Petition of John S. Tarver.*

Record No. 153. District Court, Parish of Rapides, La.

To the honorable the judge of the ninth judicial district of Louisiana, sitting in and for the parish of Rapides:

The petition of John S. Tarver, a resident of the parish of Avoyelles, shows the court that Walter O. Winn, whose domicil was your parish of Rapides, is indebted to him in the sum of twenty-nine hundred and thirty-six dollars and 42 cents, with five per cent. interest from 1st of November, 1861, as is evidenced by the obligation of said Winn, which will be produced on the trial hereof.

His debtor has died, and his succession has been opened in the parish of Rapides by his executrix and widow, Mary E. Winn, who is also universal heir, and who has accepted the same unconditionally.

Amicable demand not proving of any avail, petitioner prays that citation and copy hereof issue and be served upon the executrix aforesaid, and, after legal delay, that he have judgment for same claim, interest thereon, and costs.

He prays for general relief.

MANNING,
Att'y for Pl'fs

152 District court, parish of Rapides. Filed Dec. 16, 1865.
R. M. KILPATRICK, *Clerk.*

Ordered that William A. Levy, Esq., atto.-at-law, be appointed curator *ad hoc*, to represent Mrs. Mary E. Winn, the defendant in this suit, she being now absent from the State.

This done and signed at the clerk's office, his honor the judge of the district court being absent from the parish, on this the 16th day of December, 1865.

R. M. KILPATRICK, *Clerk.*

I hereby accept service. WM. A. LEVY,
Curator ad hoc.

JOHN S. TARVER
vs.
W. O. WINN *et al.* } No. 153.

The honorable the judge of the 9th judicial district court of Rapides parish, La.:

And now comes into court, by the undersigned counsel, Mrs. Mary E. Winn, surviving wife and universal legatee of Walter O.
153 Winn, deceased, and for answer to the plaintiff's demand excepts to the service of the petition and the citation as irregular, defective, and illegal, inasmuch as the curator *ad hoc* appointed by the court to represent the defendant has accepted service of the petition and citation, a legal requisite which that officer (curator *ad hoc*) had no*m* power or right to do.

Respondent prays to be hence dismissed, with costs, and general relief, &c.

RYAN & WHITE, *Att'ys.*

Dist. court, parish of Rapides. Filed March 9th, 1866.
W. W. WHITTINGTON, JR., *Clerk.*

JNO. S. TARVER
vs.
W. O. WINN Succ'n. } No. 153.

Note of Evidence.

Plaintiff's evidence. Note dated February 13th, 1861. Marked (A). Genuineness of signature admitted.

W. B. LEWIS sworn: Witness says that Mary E. Winn is the executrix of W. O. Winn, deceased. Probate proceedings and will of the deceased were burned among the records of the parish in 1864. She was made the universal legatee in the will.

154 I certify the foregoing evidence to have been taken in open court the 9th day of March, 1866.

W. W. WHITTINGTON, JR., *Clerk.*

Dist. court, parish of Rapides. Filed March 9th, 1866.
W. W. WHITTINGTON, "*Clerk.*"

"A."

WINN FOREST PLANTATION, LA.,
February 13th, 1861.

On the 1st day of March next, 1861, I promise to pay to Jno. S. Tarver or order the sum of twenty-six hundred & sixty-nine $\frac{48}{100}$ dollars ($2,669$\frac{48}{100}$), for his services on my Winn Forest plantation as overseer. In case I should fail to comply with the above on the 1st of March, I hereby bind myself to pay to said John S. Tarver or order on the first of November, 1861, the sum of twenty-nine hundred and thirty-six $\frac{42}{100}$, ($2,936$\frac{42}{100}$), for his services rendered on my Winn Forest plantation.

W. O. WINN.

Dist. court, parish of Rapides. Filed March 9th, 1866.
W. W. WHITTINGTON, *Clerk.*

155 STATE OF LOUISIANA:

Dist. Court, Parish of Rapides. March Term, 1866.

JOHN S. TARVER
vs.
W. O. WINN- EXECUTRIX. } No. 153.

In this case, by reason of the law and the evidence, it is ordered, adjudged, and decreed that the plaintiff, Jno. S. Tarver, have and recover of the defendant, Mary E. Winn, executrix and universal heir of Walter O. Winn, two thousand six hundred and sixty-nine dollars and 48 cents, and costs of suit, to be taxed.

Done and signed, after being read in open court, this twelfth day of March, A. D. 1866.

W. B. LEWIS,
Judge 9th Dist. Court.

District court, parish of Rapides. Filed March 12, 1866.
W. W. WHITTINGTON, JR., *Clerk.*

In District Court, Rapides Parish.

JOHN S. TARVER
vs.
MARY E. WINN. } No. 153.

Know all men by these presents that we, John S. Tarver,
156 as principal, and ——— ———, as security, are held and firmly bound to Mary E. Winn, executrix of W. O. Winn, in the sum of one hundred dollars, for the payment whereof we bind ourselves, our heirs, executors, *in solido.*

Dated at Alexandria, the fourth day of June, 1866.

The condition of the above obligation is such, that whereas the above-bounden Tarver has been injured by a judgment rendered in the above-entitled suit at the March term of the aforesaid court, 1864, and has urged and obtained a devolutive appeal therefrom,

returnable on 2 Monday in August, 1866, to the supreme court at Natchitoches:

Now, if the said appellant shall prosecute his said appeal with effect, or in default thereof, that —— pay and satisfy such judgment as may [be] rendered against him on a devolutive appeal, then the above obligation to be void; otherwise to remain in full force and virtue.

J. S. TARVER, for
T. C. MANNING, *Atto.*
S. K. JOHNSON.

Dist. court, Rapides parish. Filed August 8th, 1866.
W. B. PHILLIPS, *D'y Clerk.*

157 Supreme Court of the State of Louisiana, at Natchitoches.

JNO. S. TARVER, App'l., }
vs. } No. 5.
W. O. WINN, App'lee. }

It is therefore directed that the judgment of the district court be so amended as to allow plaintiff to recover of defendant interest, at the rate of five per cent. per annum from the 1st of March, 1861, on the amount of the payment rendered by the lower court. It is further decreed that in all other respects the judgment of the lower court be affirmed.

It is further decreed that defendant pay the costs of this appeal.

SUPREME COURT, CLERK'S OFFICE.

I certify the above to be a true and correct copy of the original decree in the above-entitled and numbered suit, on file and of record in my office.

In testimony whereof, I hereto set my hand and seal of office this 21st day of September, A. D. 1866.

A. E. LEMEE, *Clerk.*

Dist. court, parish Rapides. Filed Sept. 25th, 1866.
W. B. PHILLIPS, *Dep'y Clerk.*

158 STATE OF LOUISIANA *Parish of Rapides:*

District Court.

To the sheriff of Rapides parish, Greeting:

We command you that by seizure and sale of the property, real and personal, rights and credits of Mrs. Mary E. Winn, executrix, and universal heir of Walter O. Winn, in the manner prescribed by law, you cause to be made the sum of two thousand six hundred and sixty-nine $\frac{48}{100}$ dollars debt, with interest thereon from the 1st day of March, 1861, until paid, at the rate of five (5) per cent. per annum, and also the sum of thirty ($30) dollars costs, as well as your own costs and charges, to satisfy a judgment lately rendered

against the said Mary E. Winn, &c., in the supreme court in the parish of Natchitoches, in favor of Jno. S. Tarver.

And how you shall have executed this writ, you make return to our said court in seventy days, as the law directs.

Witness the Honorable W. B. Lewis, judge of said court, at Alexandria, this 19th day of March, A. D. 1868.

J. W. HICKMAN, *Clerk.*

159 Rec'd the within writ of *fi. fa.* March 19th, 1868, and on the 23 of same month and year, by virtue of same, I seized a tract of land in the parish of Rapides, with all the improvements, situated on the right bank of Bayou Rapides descending, bounded above by land of T. Maddox, below by that of Robert Hynson, containing the quantity of four hundred and fifty acres, more or less, and advertised the same for sale on the 1st April, 1868, when on the 1st day of May, 1868, I was enjoined from further proceedings.

JOHN CLEMENTS, *Dep't. Sheriff.*

Ret. filed July 26th, 1867.

CHARLES OWEN, *D'y Clerk.*

9th Dist. Court, Parish of Rapides.

JOHN S. TARVER
vs.
WALTER O. WINN- EX'TR'X, } No. 158.

SHERIFF'S OFFICE, PARISH OF RAPIDES,
ALEXANDRIA, *March*, 1868.

To Mary E. Winn, ex'tr'x and universal heir of Walter O. Winn:

Take notice that I have seized, and in three days from service thereof will proceed to advertise and sell, according to law,
160 a certain tract or parcel of land situate, lying, and being in the parish of Rapides, on the right bank of Bayou Rapides descending, bounded above by lands of Dr. Maddox and below by lands of Robt. C. Hynson, Sr., containing the quantity of four hundred and fifty acres, more or less, and known as the Cropland Plantation, with all the improvements thereon, to pay and satisfy the writ issued in this case—say the sum of $2,669.07, with interest and costs, unless the same is immediately paid.

A. J. SYPHER, *Sheriff.*

Received the within notice of seizure and petition on the 22d day of same month and year; duly served a true copy on Mary E. Winn, executrix, by handing the same to Mrs. Caroline Bynum, at the domicil of said Mary E. Winn, she being absent from the State at the time.

W. W. HALLIS, *D'y Sheriff.*

District court, parish of Rapides. Filed July 26th, 1867.

CHARLES OWEN, *D'y Clerk.*

161 State of Louisiana, Sheriff's Office, Parish of Rapides. 9th Dist. Court, Parish of Rapides.

JOHN S. TARVER
vs.
WALTER O. WINN- Ex'tr'x. } No. 153.

To Mary E. Winn, universal heir of Walter O. Winn:

You will please appoint an appraiser to estimate the value of the property seized in the above case, who will attend at my office on or before Saturday, the 2d day of May, 1868, at 10, o'clock a. m.

Alexandria, April, 1868.

C. V. LEDOUX, *Sheriff.*

Dist. court, parish of Rapides. Filed July 26, '67.
CHARLES OWEN,
D'y Clerk.

Sheriff's Office, Alexandria, Parish of Rapides. 9th District Court, Parish of Rapides.

JOHN S. TARVER
vs.
WALTER O. [WINN's] Ex't'x. } No. 153.

We, ——, do solemnly swear that the appraisement we will make of the property seized and advertised for sale in the above-entitled and numbered suit will be the present value in cash, to the best of our knowledge and belief, so help us God.

162 We, the undersigned, appraisers, being chosen and duly sworn to appraise the property advertised for sale in the above-entitled suit, do appraise the same to be worth in cash as follows:

The plantation as set forth in the advertisement.

District court, parish Rapides, La. Filed July 26th, 1867.
CHARLES OWEN,
D'y Clerk.

Sheriff's Sale.

9th District Court, Parish of Rapides, Louisiana.

JOHN S. TARVER
vs.
WALTER O. WINN- Ex't'x. } No. 153.

By virtue of a writ of *fire facias*, issued from the honorable this 9th district court, parish of Rapides, State of Louisiana, and to me addressed, in the above-entitled and numbered suit, I have seized and will offer for sale to the last and highest bidder, on Saturday, the 2d day of March, A. D. 1868, between the hours of 11 a. m. and 4 p. m., at the court-house door, in the town of Alexandria, parish of Rapides, State of Louisiana, the following described property, seized as the property of defendant, to wit:

163 A certain tract or parcel of land situated, lying, and being in the parish of Rapides, descending, bounded above by lands of Robt. C. Hynson, containing four hundred acres, more or less, and know- as the Cropland plantation, with all the improvements thereon.

Term of sale, cash, in U. S. Treasury notes, subject to appraisement.

A. J. SYHER, *Sheriff.*

April 1st, 1868: P. F., $8.55.

Minutes of the Court.

JOHN S. TARVER
vs.
W. O. WINN & *et al.* } No. 153.

March 6th, 1866. Default.

March 9th, 1866. Exception filed and overruled, because it came too late. Judgment for $2,669$\frac{48}{100}$ & costs of suit. Devolutive appeal allowed on bond of 100\frac{00}{100}$.

Minutes signed.

WM. B. LEWIS,
Judge 9th Dist.

Bill of Exceptions.

Succession of W. O. WINN
vs.
164 J. S. MAYFIELD, to Destitution of MARY E. RICHARDS.

On trial of Opposition to Final Account of J. M. Wells, Dative Tmts. Ex'tr, &c.

Be it remembered, that on the trial of the opposition to the final account of J. M. Wells, pub. administ., etc., John D. Dubose, one of the opponets, and on the trial of his opposition offered in evidence the testimony of Mary E. Winn, now wife of A. Keen Richards, as to the date of her acknowledgment in writing on the back of the nine notes of John S. Mayfield, each for $5,000.00, and which acknowledgment is date 1st November, 1865.

Counsel for John S. Mayfield objected to the introduction of said testimony, upon the following grounds, viz: 1st. That the witnesses being the executrix of her husband, Walter O. Winn, who had, in that capacity, signed the said acknowledgment on the note, she could not be heard to contradict, alter, or vary her said acknowledgment. 2d. That his testimony being a direct attack upon the claims of Mayfield, he was a necessary party, and should have been cited. 3rd. That Mayfield's claim has been recognized by the supreme court, and is *res adjudicata.* Which objections were overruled by the court, and the testimany admitted, for the following reasons, viz:

165 To which ruling of the court the counsel for Mayfield excepted and now tenders this his bill of exceptions to be verified by the court.

Done and signed in open court on this 12th day of January, A. D. 1881.

ARISTIDE BARBIN,
Judge 12 *Dist. La.*

Filed Jan'y 12th, 1881.

C. RANSDELL, *D'y Clerk.*

No. 40. Probate Court, Rapides Parish, Louisiana.

Succession of W. A. WINN.

On opposition of John D. DuBose to account of J. M. Wells, public administrator.

Be it remembered, that on the trial of this cause, John S. Mayfield, one of the opposing creditors (who was also opposing DuBose's claim), offered to prove by Mr. Ryan's testimony that the executrix of the said succession, had not been cited in the suit of DuBose *vs.* Winn, executrix, No. 1115 of the docket of the district court of said parish, when the opponent, John DuBose, objected to the
166 introduction of said testimony, upon the grounds that *that* it went to support an allegation in Mayfield's answer that DuBose judgment was an absolute nullity, and that that issue could not be raised nor a judgment attacked in this kind of proceeding. Which objection was overruled by the * * * for the following reasons, to wit*h*:

To which ruling of the court opponent, DuBose, now excepts and tenders this his bill of exceptions to be signed and certified according to law.

Thus done and signed in open court on this 12th day of January, A. D. 1881.

ARISTIDE BARBIN,
Judge 12 *District, La.*

Filed January 12th, 1881.

C. L. RANSDELL, *D'y Clerk.*

Trial of Provisional Account.

No. 40. 12th Judicial District Court, Parish of Rapides, State of Louisiana. January Term A. D. 1881.

Succession WALTER O. WINN.

This cause coming on for trial pursuant to previous assign-
167 ment on the rule of the opposition to the trial of the provisional account filed by J. Madison Wells, dative testamentary executor, and the oppositions among the creditors of the estate to their several accounts and judgments, and the trial having been had and the court having heard the proof and oral *agree*ment of counsel, and considering that the law and the evidence favors the same:

It is ordered, adjudged, and decreed that the opposition of Du Bose, Tarver, and Gasquet be, and they are hereby, sustained so far as to recognize the judgment held by said parties to be valid and legal

debts due by said succ'n of W. O. Winn, and the said J. M. Wells, executor, &c., is ordered to place the said claims upon the provisional accounts herein opposed as ordinary claims, to be paid as such, & that there be judgment in favor of John S. Mayfield on the oppositions of said parties to his claims.

It is further ordered, adjudged, and decreed that the claim of John S. Mayfield against the said succession of Walter O. Winn and based on nine promissory notes signed by Walter O. Winn, each for
168 the sum of five thousand dollars, dated New Orleans, 30th March, 1860, payable to the order of Rotchford, Brown & Co., with eight per cent. per annum interest from date, and endorsed by said Rotchford, Brown & Co., four of the series payable 10th December, 1860, be, and the same is, decreed to be a valid and legal debt due by said succ'n of W. O. Winn, and probably placed in said provisional account as an ordinary claim.

It is further ordered, adjudged, and decreed that the provisional account herein filed as amended by placing the claim of John D. DuBose, Tarver, and Gasquet thereon be, & the same is hereby, homologated and approved, & the said executrix be, and is hereby, authorized and ordered to pay and distribute the funds on hand in accordance with the amended tableau.

This done, read, and signed in open court, this fifteenth day of January, A. D. 1881.

ARISTIDE BARBIN,
Judge 12th Judicial District.

169 No. 40.

Succession of W. O. Winn on Opposition to Provisional Account.

To the hon'l the judge of the 12th judicial dist. court, parish of Rapides, State of Louisiana:

The petition of John S. Mayfield, with respect, shows your hon'l court that he is aggrieved by a judgment recently rendered by your honor, on the — day of January, 1881, in the above numbered and entitled cause, wherein your hon. dismissed his oppositions to the claims, and overruled his plea of prescription against the claims and judgments of John D. Dubose, Gasquet, & John S. Tarver, claiming to be creditors of the said succ'n, and ordering them to be placed on the tableau or provisional account of James M. Wells, dative testamentary executor, & paid *pro rata* with the claim of your petitioner, which is based upon nine notes, each for $\$5{,}000\frac{00}{100}$ & interest.

Wherefore your petitioner pray- an order of appeal, suspensive devolutive, to the hon'l supreme court of Louisiana, accord-
170 ing to law, and that your honor fix the amount of bonds therefor, and that said parties be cited according to law herein.

R. A. & ROBT. P. HUNTEN,
Of Counsel.

Order.

The foregoing petition being considered, it is ordered that an appeal, suspensive and devolutive, be granted to petitioner, John S.

Mayfield, from the judgment rendered on the — day of January, 1881, overruling the plea of prescription to the claims and judgments of John D. DuBose, Gasquet, and Tarver, and ordering them placed on the provisional account returnable to the hon'l the supreme court of Louisiana, at the city of New Orleans, La., on the 2d Monday of February, A. D. 1881, upon plaintiff's giving bond and security, according to law, in the sum of two hundred & fifty dollars for a suspensive appeal, and in the sum of two hundred & fifty dollars for a devolutive appeal, and that citation issue as prayed for, and according to law.

This done, read, and signed in chambers, this 25th day of January, A. D. 1881.

ARISTIDE BARBIN,
Judge 12 *Judicial District.*

171 I hereby accept service of the foregoing petition of appeal, Jan'y 25, 1881.

R. J. BOWMAN,
Att'y for Exe'tor.
JAMES ANDREWS,
Att'y for DuBose.
W. F. BLACKMAN,
Att'y for Mrs. Winn.

Filed January 27th, 1881.

C. L. RANSDELL, *D'y Clerk.*

The State of Louisiana, Parish of Rapides.

No. 40. Succession of W. O. Winn on Opposition to Provisional Account.

Know all men by these presents that we, John S. Mayfield, as principal & R. A. & Robt. P. Hunter, as securities, are held and firmly bound into George O. Waters clerk, &c., in the full and just sum of two hundred & fifty dollars, for the payment of which, well and truly, to be made, we bind ourselves, our heirs, and executors, firmly by these presents.

Dated at Alexandria, Louisiana, this January 25, 1881.

The condition of this obligation is such that whereas the said John S. Mayfield has taken an appeal, suspensive and
172 devolutive from a judgment rendered in the above numbered and intitled cause on — day of January, 1881, in the 12th judicial dist. court, parish of Rapides, and State of Louisiana, overruling the plea of prescription filed by him to the claims of John D. DuBose, Gasquet, and Tarver, and ordering the said claims placed on the provisional account and returnable to the hon'l supreme court of the State of Louisiana, and on the 2 Monday of February, 1881. Now, therefore, if the said John S. Mayfield shall prosecute this appeal with effect and shall pay or cause to be paid whatever final judgment said John D. DuBose, Gasquet, and John S. Tarver may finally recover on appeal against him, or that the same shall be satisfied by the sale of the property, real and personal, if he be

cast in the appeal, and in default thereof that his said security shall be liable in his stead, then and in that case this obligation shall be null & void; otherwise to be and remain of full force and effect in law.

JOHN S. MAYFIELD,
Per R. A. & ROBT. T. HUNTER, *Atty's.*
R. A. & ROBT. P. HUNTER.

Filed Feb'y 28, '81.

C. S. RANSDELL, *D'y Clerk.*

173 Know all men by these presents that we, John D. DuBose, as principal, and Jose Andrew, Jr., as security, are held — firmly bound unto Geo. O. Watts, clerk of the district court for Rapides parish, and his successors in office, in the sum of one hundred & fifty dollars, for the payment whereof we bind our heirs, administrators, and executors firmly by these presents.

Dated Alexandria, La., on this 1st day of February, A. D. 1881.

Whereas the above-bounden John D. Dubose has appealed from a final judgment rendered against him in the suit of opposition to the account of J. M. Wells, public administrator of the succ'n of W. O. Winn, deceased, in the district court in and for the parish of Rapides, Louisiana, on the 15th day of January, A. D. 1881, and No. —:

Now, the condition of the above obligation is such that the above-bound Jno. D. DuBose *and* shall prosecute his appeal & shall satisfy whatever judgment may be rendered against him, or that the same shall be satisfied by the proceeds of the sale of his estate, real
174 & personal, if he be cast in the appeal; otherwise that the said Jas. Andrew, Jr., security shall be liable in his place.

JOHN D. DUBOSE,
Per JAS. ANDREW, JR., *Att'y.*
JAS. ANDREW, JR.

Filed Feb. 3, A. D. 1881.

GEORGE O. WATTS, *Clerk.*

Know all men by these presents, that we, Mary E. Richards & husband, A. Keene Richards, as principal, and W. F. Blackman, as security, are held and firmly bound unto Geo. O. Watts, cl'k district ——, and his successors in office, in the sum of one hundred & fifty dollars, for payment whereof we bind ourselves, our heirs, administrators, & executors, firmly by these presents.

Sealed with our seal, and dated at Alexandria, La., on this — day of ——, 18—.

Whereas the above-bounden Mary E. Richards & husband have appeal- from a final judgment rendered against Mary E. Richards (Winn) in the suit of opposition to the provisional account of J. M. Wells, ex't'r succession of Walter O. Winn, in the dist. court
175 in and for Rapides parish, Louisiana, on the 15th day of Jan'y, 1881:

Now the conditions of the above obligation is such that the above-

bound Mary E. Richards (Winn) & husband shall prosecute, appeal, and shall satisfy whatever judgment may be rendered against her, or that the same shall be satified by the sale of her estate, real or personal, if she be cast in the appeal; otherwise the said W. F. Blackman, suret-, shall be liable in place.

MARY E. RICHARDS,
for W. F. BLACKMAN.
W. F. BLACKMAN,
Security.

Dist. court, parish of Rapides, La. Filed February 3d, 1881.
GEORGE O. WATTS, *Clerk.*

Minutes of the Court.

Succession of W. O. WINN. No. 40. Oct. 18th, 1880.

Rule on pub. adm'st'r filed and ordered to be served, and the pub. adm'st'r ordered to answer it in 10 days. Exception
176 of J. S. Mayfield to opposition of DuBose referred to the merits. Right reserved to counsel of Mayfield to file additional answer if they desire it. Opposition set for Monday, Nov. 8th, Oct. 20th, 1880.

Opposition of Jno. S. Tarver and Widow Gasquet filed Nov. 10, 1880.

Opposition to the claims of Jno. S. Tarver & Wm. A. Gasquet, Jan'y 4, 1881.

Opposition set for Friday, 7th —, '81, Jan'y 7th, —.

Motion to strike out filed January 11th, 1881.

On trial of oppositions, oppositions taken up & trial entered into January 12th, 1881.

On trial of opposition, oppositions taken up and trial proceeded with, submitted, and judgment sustaining the opposition of Tarver, Gasquet, and DuBose, so far as to order them to be placed upon the tableau; that their opposition to the claim of J. S. Mayfield be recognized as a valid claim against the succession, and as thus amended the provisional account filed by the executor be homologated and the executor authorized to distribute the funds in accordance therewith. See decree, Jan'y 15, 1881.

177 Appeal prayed for and granted in open court to opposition of J. D. DuBose, returnable to the next term of the supreme court, to be holden in the city of New Orleans on the 2d Monday of February, A. D. 1881.

Devolutive appeal bond in the sum of $150, suspensive according to law.

Appeal prayed for and granted in open court to opponent, Mary E. Richards, returnable to the next term of the supreme court, to be holden in the city of New Orleans on the 2d Monday in February, A. D. 1881.

Devolutive appeal bond in the sum of $150, suspensive according to law.

Minutes signed: ARISTIDE BARBIN,
Judge 12th District.

CLERK'S OFFICE, RAPIDES PARISH, LOUISIANA.

I, George O. Watts, clerk of the 12th judicial district court in and for Rapides parish, State of Louisiana, do hereby certify that the above and foregoing 196 pages contain a true, correct, and
178 complete transcript of all documents filed, all proceedings had, and all testimony adduced on the trial of the opposition filed to the account, filed in the succession of Walter O. Winn, No. 40, probate docket, district court, Rapides parish, La., by J. Madison Wells, Jr., executor of said succession, wherein J. Madison Wells, Jr., ex't'r, is plaintiff, and Mary E. Richards, John D. DuBose, William A. Gasquet, and John S. Tarver are defendants and opponents, except judgment of the supreme court, No. 1657, in said succession, which is lost from the record and cannot be found.

In testimony whereof, witness my official signature and seal of office at Alexandria, La., on this 5th day of February, A. D. 1881.

GEORGE O. WATTS, *Clerk.*

179 UNITED STATES OF AMERICA, *State of Louisiana.*

Supreme Court of the State of Louisiana.

Proceedings had in the supreme court of the State of Louisiana.

Succession of WALTER O. WINN. On Trial of Oppositions.

Transcript of appeal. Filed 16 Feb'y, 1881.

GEORGE W. DUPRÉ, *Clerk.*

Motion to Dismiss. Filed Feb. 16, 1881.

No. 8211. Supreme Court.

Succession of WALTER O. WINN.

On motion of Breaux and Blackman, of counsel for Mrs. Richards, opponent, and on suggesting to the court that the appeal of Jno. S. Mayfield, in above case, was taken by petition, that the representative of Wm. A. Gasquet, a necessary party to the suit, has neither been cited, ordered to be cited, or accepted service of citation of appeal as other parties have. See record, p. 188.

It is ordered that said Mayfield's appeal be dismissed.

180 "*Continuance.*"

Extract from the Minutes.

THURSDAY, *February 17th,* 1881.

The court was duly opened.

Present: Their honors, Edward Bermudez, chief justice, and Felix P. Poche, Robert B. Todd, William M. Levy, Charles E. Fenner, associate justices.

Succession of WALTER O. WINN. No. 8211.

This case was ordered by the court to be continued with preference,

"*Continuance.*"

Extract from the Minutes.

FRIDAY, *Feb.* 18*th*, 1881.

The court was duly opened.

Present: Their honors, Edward Bermudez, chief justice, and Felix P. Poche, Robert B. Todd, William M. Levy, Charles E. Fenner, associate justices.

Succession of WALTER O. WINN. No. 8211.

This case was ordered by the court to be continued with preference.

Continuance.

Extract from the Minutes.

SATURDAY, *Feb.* 19*th*, 1881.

The court was duly opened.

181 Present: Their honors, Edward Bermudez, chief justice, and Felix P. Poche, Robert B. Todd, William M. Levy, Charles E. Fenner, associate justices.

Succession of WALTER O. WINN. No. 8211.

This case was ordered by the court to be continued with preference.

Continuance.

Extract from the Minutes.

MONDAY, *February* 21, 1881.

The court was duly opened pursuant to adjournment.

Present: Their honors, Edward Bermudez, chief justice, and Felix P. Poche, Robert B. Todd, William M. Levy, Charles E. Fenner, associate justices.

Succession of WALTER O. WINN. No. 8211.

This case was ordered by the court to [be] continued with preference.

Answer. Filed 23, *Feb.*, 1881.

Succession of W. O. WINN. No. —.

In this cause now at this time comes John S. Mayfield,
182 through his counsel, and for answer to the appeals herein, and assuming the position of appellee, prays that this judgment of the lower court be amended by rejecting the claims of DuBose, Tarver, and Gasquet for the reasons set forth in his oppositions to these claims on file in the record, and as in duty bound he will ever pray, &c.

MERRICK, RACE & FOSTER,
R. A. & ROB'T P. HUNTER,
Of Counsel.

Continuance.

Extract from the Minutes.

WEDNESDAY, *February 23rd*, 1881.

The court was duly opened pursuant to adjournment.

Present: Their honors, Edward Bermudez, chief justice, and Felix P. Poche, Robert B. Todd, William M. Levy, Charles E. Fenner, associate justices.

Succession of WALTER O. WINN. No. 8211.

This case was ordered by the court to be continued with preference.

183 *Continuance.*

Extract from the Minutes.

THURSDAY, *February 24th*, 1881.

The court was duly opened.

Present: Their honors, Edward Bermudez, chief justice, and Felix P. Poche, Robert B. Todd, William M. Levy, Charles E. Tenner, associate justices.

Succession of WALTER O. WINN. No. 8211.

This case was ordered by the court to be continued, with preference.

Case Submitted.

Extract from the Minutes.

FRIDAY, *February 25th*, 1881.

The court was duly opened.

Present: Their honors, Edward Bermudez, chief justice, and Robert B. Todd, William M. Levy, Charles E. Fenner, associate justices.

Absent: Felix P. Poche, associate justice.

Succession of WALTER O. WINN. No. 8211.

This case was called for trial, and having heard argument from R. J. Bowman, Esq., counsel for the executor, appellee, and from
184 Gus. A. Breaux, Esq., of counsel for Mrs. Richards, opponent and appellee, this court took said case under advisement upon the merits and a motion to dismiss the appeal, and upon the briefs on file and to be filed within ten days from this date.

Opinion of the Court. Filed May 23d, 1881.

Succession of W. O. WINN. Opposition to Account of Executor. No. 8211.

Mr. Justice TODD:

On the 5th July, 1880, J. M. Wells, Jr., executor of the succession

of Walter O. Winn, filed in the district court of the parish of Rapides a provisional account of his administration of said succession.

This account was opposed by J. D. DuBose, John S. Tarver, and widow Gasquet, claiming to be judgment creditors of the succession, and by Mary E. Richards, wife of A. Keene Richards, formerly Mary E. Winn, surviving widow & universal legatee of the deceased.

The alleged judgment creditors opposed the account, first, because their judgment had not been recognized by the executor
185 and placed on the account as just claims against the succession. In common with Mrs. Richards, they also opposed certain claims allowed in the account, the principal one of which was the claim in favor of John S. Mayfield, based on nine promissory notes, amounting, exclusive of interest, to $45,000$\frac{0}{100}$, & against which the prescription of five years was plead.

Mrs. Richards & Mayfield also pleaded the prescription of ten years against the judgments mentioned.

The district judge amended the account by recognizing the judgments in favor of DuBose, Tarver & Gasquet & ordering them to be paid and dismissed the opposition to Mayfield's claim & homologated the account as amended.

From this judgment Mrs. Richards, DuBose, and Mayfield are appellants. The judgment in favor of Tarver was signed on the 12th of March, 1866, and that in favor of Gasquet on the 7th of March, 1868, & neither was ever revived & both were therefore clearly prescribed, & in allowing & recognizing them as subsisting claims against the succession the judgment was manifestly erroneous. C. C. 3521.

186 11. In relation to the claim of Jno. S. Mayfield, pertinent to the plea of prescription urged against it, the facts, which is the sole issue respecting it to be tried, are as follows:

On the 30th of March, 1860, Walter O. Winn executed in favor of Rotchford, Brown & Co. ten promissory notes, secured by morgage on a plantation in Carroll parish for $5,000 each, one half of said notes payable on the 10th of November, & the other half payable on the 10th of December of the same year, nine of which notes were transferred to Mayfield in the year 1866.

Winn died in 1862, leaving the notes unpaid, & by last will constituted his surviving widow, Mary E. Winn, now Mrs. Richards, his universal legatee, & appointed her executrix of his estate.

On each of the nine notes held by Mayfield appears the following acknowledgment indorsed thereon, to wit:

"I hereby acknowledge this note to be a debt due by the succession of Walter O. Winn, deceased, secured by mortgage upon the property named in the act of mortgage in Carroll parish,
187 & I promise to pay the same in due course of administration.

"Alexandria, La., Nov. 1st, 1865.

(Signed) "MARY E. WINN."

The opposition of Mrs. Richards (Winn) to these notes is couched in the following language:

"She opposes the ordinary claim of nine notes for $5,000 each, amounting to $45,000, which is allowed by the public administrator (executor), and which he proposes to pay.

Opponent says that the notes are prescribed and were prescribed at the date they were accepted by the executrix, the date of the acceptance being written on the back of the notes long before they were accepted by the executrix, and accepted in error; the prescription of five years she specially pleads as a bar to said claim."

Mrs. Richards, who was sworn as a witness on the trial, fully sustains by her testimony the allegations of her opposition as to the time of the acknowledgement of the notes, and her error or ignorance with respect to the date expressed in the writing signed by her, showing that the actual date of the signing was in January,
188 1866, instead of 1st Nov., 1865. And she is fully corroborated with respect to the real date of the signing by the testimony of Judge Ryan, also in the record.

The testimony of Mrs. Richardson was, however, objected to by the counsel for Mayfield, and a bill of exception taken to its admission.

The first objection is, "that Mrs. Richards was estopped from denying her written acknowledgment or contradicting any part of the same."

We have carefully examined the authorities cited by counsel to sustain their objection, but do not think them applicable.

The executrix of Winn's succession was wholly without authority to acknowledge a claim against the succession which was barred by prescription. If she did so, and the written acceptance showed that it was allowed after prescription had ran, it would palpably be without affect as to the rights of the other creditors, heirs, or legatees of the succession.

If, however, though the acknowledgement was made after prescription, yet the writing showed a date of acceptance before prescription had accrued, and was therefore false, and the signa-
189 ture of the executrix to such false writing had been induced by error, it would certainly be competent for the executrix to expose the falsity of the writing and correct the error, and it would be her duty to do so, and the right of any other party interested to do the same, and by such exposure protect themselves from loss, would seem plausible still.

In this case the proof is offered by Mrs. Richards as universal legatee, in which capacity alone her opposition is made.

The preparation of a written acknowledgement of the notes in question, and the insertion therein of a false date and the presentation of the same to the executrix with this false date, without calling her attention to it, was a fraud upon the succession and its representative, and subject to be exposed by any one interested.

The next objection urged to the testimony was that the claim of Mayfield had been twice contested on the ground of prescription, and it had been decided that it was not prescribed, and therefore the matter was *res adjudicata*, and closed to further inquiry.

190 The question is not free from difficulty, but from a careful study of the cases in which it is contended the decisions were made, we have reached the conclusion that they do not sustain the plea.

The first case cited in support of the plea is that of the succession of W. O. Winn.

On petition of J. S. Mayfield to destitute Mary E. Richards, executrix, reported in 27 A, 687.

In this proceeding Mayfield charged that Mrs. Richards had forfeited the executorship of the succession by quitting the State and becoming a non-resident of the same, leaving no agent to represent her under a power of attorney duly recorded.

Mrs. Richards denied the right of Mayfield to institute such proceedings, on the ground that he was not a creditor of the succession, and averred that if his claim ever existed it was prescribed.

There was judgment rendered destituting her of the executorship.

The object of that suit was solely the destitution of the executrix.

There was no judgment sought or asked for on the notes, but
191 the question whether Mayfield was a creator or not was a mere incident of the proceeding raised with reference to the right of the plaintiff therein as an interested party to demand the removal of the executrix, or rather to have declared her forfeiture of the executorship by reason of removal from the State. So far as related to the existence of the claim in question or its extinguishment by prescription or otherwise, neither the succession nor its creditors were properly represented, and any ruling on the point could in no manner effect them.

This is the view taken of this identical question by our immediate predecessors in the other case cited & relied on by the counsel for Mayfield. We refer to the case entitled Succession of Walter O. Winn, reported in 30 A., 702. In that case a rule had been taken by persons claiming to be creditors of the succession to cause the property thereof to be sold to pay their debts. This was opposed by Mayfield. These creditors then denied his right to oppose them, & pleaded prescription against his claim. Mayfield resisted the plea on the ground that the question was *res adjudicata*, & cited in
192 support of it the decision in 27 A., to which we have referred.

The court, in ruling on the question said: "It is also denied that Mayfield is a creditor, and averred, if he ever was, his debt is prescribed. He claims that the question of prescription was judicially determined in his favor in a suit brought by him to remove Mrs. Winn from the administration of the estate; and that his debt, which is evidenced by several promissory notes, has been legally acknowledged both by the former & present executor. The evidence supports the latter allegation, but we do not consider the adjudication in the devo–tion suit as determining finally for other purposes and against other creditors or parties interested [in] the matter of prescription." The court dismissed the entire proceedings, and in their decree used this language:

"That the right of the several claimants, including Mayfield, to

assert their claims according to law, if any such they have, and the *the* succession and all parties in interest to contest the same, be reserved for future adjudication.

193 This disposes of the plea of *res adjudicata*, and with it of the objecting to the admission of Mr. Richards' testimony. This testimony, supported as it is by Judge Ryan, as before stated, leaves no doubt that the acknowledgment of the claim by the executrix was made after the expiration of five years, the prescriptive time from the maturity of the notes.

We would remark also that the plea of prescription was urged in these opposition proceedings against the claim of Mayfield not only by Mrs. Richards, but by those claiming to be judgment creditors of the succession.

III. The counsel for Mayfield and for the executor, however, urge with great earnestness that, even admitting that the acknowledgment of the notes was not made within the five years' prescription on the notes was suspended by and during the war, and also by the effect and under the operation of the act of Congress embraced in section 1048 United States Revised Statutes. Upon the first ground of suspension urged, whatever opinion we might entertain respecting it, were the question a new one, we must con-

194 sider it put at rest by the repeated and uniform decisions of this court running through many years. These decisions declare in unmistakable terms that the war between the States did not operate a suspension of prescription.

Upon the principle of State decree we do not feel authorized to disturb them. 19 A., 187; 20 A., 280, 363, 413, 427; 21 A., 76, 106, 126; 22 A., 111; 23 A., 553, 748.

The act of Congress, relied on as operating a suspension of prescription in this case, reads as follows:

"In all cases where, during the late rebellion, any person could not, by reason of residence —— to the execution of the laws of the United States, *or of the interruption of the ordinary course of judicial proceedings*, be served with process for the commencement of any action, civil or criminal, which had accrued against him, the time during which such person was beyond the reach of legal process shall not be taken as any part of the time limited by law for the commence[ment] of such action."

The most natural inference to be drawn from the reading

195 of this statute is, that it is applicable alone to actions and proceedings in the Federal courts, & intended to establish a rule of practice therein on the subject mentioned. We cannot readily conceive that it was designed as a law to govern the States & State courts, & that, in fact, it was virtually to constitute an amendment to our code, making an addition to the causes of the suspension of prescription therein enumerated.

We supposed if there was any one subject exclusively within the control of the State government, it was that which related to the organization of State courts defining the different kinds of actions, prescribing the time within which they must be instituted, & in fine establishing a system of practice for the regulation & government

of such courts. This was a power inherent in all sovereignties, & which the States have exercised to the fullest extent before they became members of the Federal Union, & which it was not supposed they had parted with or impaired by any delegation of the power, express or implied, to the Federal Government. Indeed, it would be difficult to the mind uninformed on this point to imagine
196 under what particular clause of the Federal Constitution the Congress of the United States could claim the right to regulate the prescription of actions in the States; that is, to determine within what time actions were to be brought in, and to declare that any particular cause, condition, or circumstance could modify such rule of practice or suspend its operation. The statute in question, if applicable to State courts, is just one of this kind, & necessarily involves such an assumption of power.

Opposed to such authority, in our opinion, are the plain terms of the Constitution itself, and as plain teachings of the framers of that instrument & of the writers on the subject of its construction, & the relative powers of the States & the Federal Government under it. And equally opposed to it we believe to be the jurisprudence of both Federal & State, established by an unbroken series of decisions on subjects strictly analogous to the one involved.

State courts, acting on matters within their jurisdiction under State laws regulating the practice in them, & the right & form of actions to be prosecuted before them, & in no manner im-
197 pinging on the inhibitions of the Federal Constitution, are just as independent & free from Federal control and interference as the courts of a distinct sovereignty or of another country.

And notwithstanding our profound respect for that august tribunal, we cannot yield our firm and conscientious convictions on this subject to an isolated decision of the Supreme Court of the United States, (Stewart *vs.* Kohn, 11 Wall., 493,) which held that this Federal statute was applicable to proceedings in State courts, nor are our convictions changed by the legal subtlety displayed in the constitutional authority of Congress thus to legislate for the government of the State courts, & to fix the prescription of actions therein, in or under the war making power. We say isolated decision, for the reason that it is the only one we find in which the decision was rendered on appeal from a State court, and where it is distinctly announced that the statute in question applied to and controlled proceedings in State courts, every other case in which the effect of that statute was at issue having been instituted in the Federal
198 courts, & such effect not having been expressly extended to the State courts.

Nor are we any more impressed with the authority of a decision of the supreme court of this State, 28 A., 840, (Aby *vs.* Brigham, curator) invoked, which contains a mere dictum on the point without comment or reason, & shows nothing on the face of it but an acquiescence in an authority, which, if universially conceded and exercised in *para materia*, can successfully invade every subject heretofore acknowledged to pertain to the domestic affairs and institutions of a State, and supplant the rights of action, the mode of

procedure or practice in the State courts by other systems, modes, & methods, framed & supplied by congressional legislation.

The case last referred to, to the extent of the authority of this court, may be considered overruled.

Under this view of the subject, we conclude that the claim of Mayfield was prescribed when acknowledged by the executrix, & that acknowledgment made after prescription had run, was without legal effect against the succession or any person, or any person intrusted therein.

199 This disposes also of the questions raised by the opposition of Mayfield, who, being without interest, has no right to oppose the claims of others, or raise issues touching any of the proceedings.

IV. The claims of Mayfield, as also of Tarver and Gasquet, being disposed of, the only parties left before the court are the executor & the opponents, Mrs. Richards & DuBose.

We do not understand that the payment of DuBose is opposed by Mrs. Richards, inasmuch as no objection thereto is urged by the counsel in their brief. But, however, even if we consider her opposition as extended to this claim it is without effect, since it is limited to the plea of prescription against the judgment, and we find that ten years have not yet elapsed since its rendition.

V. The only other items of the account opposed are four, consisting of the charges for attorney's fee of R. J. Bowman (item 30), $919, taxes $226.62 (item 4), and cost of certain suits.

The evidence sustains the charge for attorney's fee, & the ground of opposition to the costs is not on account of their incorrect-

200 ness, but of their not enuring to the benefit of the estate, which allegation is unsustained by proof, & is therefore overruled. The item for taxes is supported neither by a voucher nor by proof, & must be rejected.

It is therefore ordered, adjudged, and decreed that the judgment of the lower court be amended by rejecting the claims of Jno. S. Mayfield, John S. Tarver, widow Gasquet, and the item of $266.66 for taxes, as proper charges against the succession of W. O. Winn, deceased, & sustaining the opposition of Mrs. Mary E. Richards & J. D. DuBose thereto, and, as thus amended, it be affirmed, the costs of the oppositions of Mayfield, Tarver, & Gasquet in both courts to be paid by these opponents respectively, and the balance of the costs by the succession of W. O. Winn.

Judgment and Decree.

Extract from the Minutes.

MONDAY, *May 23d*, 1881.

The court was duly opened. Present: Their Honors Edward Bermudez, chief justice, and Felix P. Poche, Robert B. Todd, William M. Levy, Charles E. Fenner, associate justices.

201 Succession of WALTER O. WINN.

Opposition to Account of Executors.

Appeal from the 12th Judicial District Court, Parish of Rapides.

It is ordered, adjudged, and decreed that the judgment of the lower court be amended by rejecting the claims of John S. Mayfield, John S. Tarver, Widow Gasguet, and the item of $266.66 for taxes, as proper charges against the succession of W. O. Winn, deceased, and sustaining the oppósitions of Mrs. Mary E. Richards and J. D. DuBose thereto; and as thus amended it be affirmed, the costs of the opposition of Mayfield, Tarver, and Gasguet in both courts to be paid by these opponents, respectively, and the balance of the costs by the succession of W. O. Winn.

Petition for Rehearing. Filed May 30th, 1881.

In the Supreme Court of Louisiana.

In the Matter of the Succession of WALTER O. WINN.

In this case the executor, J. M. Wells, Jr., moves the court for a rehearing on that portion of their judgment which rejects item 4 for $266.66, taxes paid, as not a proper charge against the succession, on the following grounds, viz:

202 1st. Because the opposition to said item is solely upon the ground of prescription, and not upon the ground that the taxes were on property belonging to the succession of W. O. Winn, which, if specially pleaded, the executor could and would have shown beyond controversy by the probate sale of the very property which was sold and the proceeds of which figures on the account for the sum of $2,975.

2d. If the report we have seen, that said item is rejected because it is not a proper charge against the succession, is an erroneous report, and said item is rejected on the plea of prescription set up by the opposition, then the judgment is erroneous in sustaining said plea, there being no prescription against taxes in 1877, and especially for the [year] of 1876, due in 1877, and 1875, due in '76, and 1874, due in 1875, and 1873, due in 1874.

3rd. Because the said item of $266.66 is the taxes in the parish of Caddo upon the very land which was sold in 1878, the proceeds of which, viz., $975, figure on the credit side of this account, as shown by the voucher on file with said account, and which were paid to prevent said land from being sold for said taxes.

203 5th. The court should grant a rehearing for the purpose of reserving to the executor the right of showing that the said taxes were taxes assessed upon the land in Caddo, & were paid to prevent the sale of that land by the tax collector, & that the proceeds of that land figure in the account as alleged.

All of which is respectfully submitted by—

R. J. BOWMAN,
Att'y for Executor.

Motion for Time. Filed May 30th, 1881.

In the Supreme Court of La.

In the Matter of the Succession of WALTER O. WINN.

In this case the executor, J. M. Wells, Jr., moves the court for a delay of twenty-five days to prepare & file his printed brief in support of his motion for a rehearing. Executor represents that he has only seen a newspaper report of the decision; that owing to the uncertainty & delay of the mail he cannot safely depend upon a much shorter period; that he & his att'y are three hundred and fifty miles distant, & must wait the delay of a return mail before getting
204 anew a synopsis of the grounds of the — of your hon. court, &, besides the time required in preparing his argument, a further delay of sending to the city for printing and filing; that this long delay could be lessened perhaps one-half by his att'y going to the city & remaining there until the argument was written & printed, which would involve such an abandonment of his business at the bar in his district & such an enormous expense as to render such a trip impossible or ruinous.

Wherefore petitioner prays that a delay of twenty-five days, or such reasonable time as your hon. court may deem just, be granted him for preparing his argument in support of his motion for a rehearing.

R. J. BOWMAN,
Att'y for Executor.

Motion for Time to file Argument for Rehearing. Filed May 30, 1881.

In the Supreme Court of Louisiana.

In the Matter of the Succession of W. O. WINN.

In this case the executor moves the court for twenty-five days to file his brief in support of his motion for a rehearing on the
205 following grounds, viz: Executor represents that his att'y, as well as himself, reside in the parish of Rapides, three hundred and fifty miles from New Orleans, & are submitted to long delays in receiving the reports of the decisions of your hon. court.

That in this case he has just seen the newspaper report of the decision, and cannot get a copy of the decision under six or seven days, & then will be submitted to the further delay of writing his brief & sending it to New Orleans to be printed, which will consume the time, or nearly all the time, asked as a delay.

That if his att'y could leave home & go to the city, he could not reach there under two or three days, & could not even then prepare his brief under six or seven days, & to require his att'y to do this would be virtually to require of the country bar an impossibility.

Whereupon executor prays that a delay of twenty-five days be granted him to prepare his argument for a rehearing.

R. J. BOWMAN,
Att'y for Executor.

206 *Order Allowing Delay.*

Extract from the Minutes.

MONDAY, *May 30th*, 1881.

The court was duly opened, pursuant to adjournment.

Present: Their Honors Edward Bermudez, chief justice, and Felix P. Poché, Robert B. Todd, William M. Levy, Charles E. Fenner, associate justices.

In the Matter of the Succession of WALTER O. WINN.

On motion of R. J. Bowman, Esq., of counsel for the executor—

It is ordered by the court that a delay of twenty-five days be granted the executor to prepare and file a brief in support of the petition for rehearing in this case.

Opinion on Rehearing. Filed Dec. 5th, 1881.

Supreme Court of Louisiana.

Mr. Justice LEVY:

On application for rehearing.

In an original judgment we rejected the claim for $266.62 (item 4), for taxes, on the ground that it was neither supported by a voucher nor by proof.

207 On his motion and brief for a rehearing, the executor urges that the vouchers as to this item were filed in the lower court, and that evidence was taken on the trial in reference thereto, and this evidence, but not the voucher itself, contained in the record; that the plea of prescription was made against the item, which is a virtual admission that the debt once existed.

Counsel for the opponent DuBose, in an addendum to the brief in behalf of executor, admits that item 4 for said taxes "was supported on the trial in the district court by the receipt of the tax collector of Caddo for that amount of taxes paid by the executor on the land in that parish, sold in 1878." There was no contest in the lower court as to the verity of the payment, but simply upon the question whether the taxes were prescribed when paid by the executor.

An examination of the record on this point satisfies us that prescription had not accrued at the date of said payment. Our original decree must, therefore, in respect to that item, be amended.

208 We find no reasons advanced to justify any change in our opinion and decree on the other points and matters decided by us.

It is therefore ordered that our original decree herein be amended so far as it rejects the item of $266\frac{62}{100}$ for taxes paid by the executor, which item is now recognized as a just claim against the succession, and in all other respects our former opinion and decree are to remain undisturb-.

Judgment and Decree on Rehearing.

Extract from the Minutes.

MONDAY, *December 5th*, 1881.

The court was duly opened, pursuant to adjournment.

Present: Their Honors Edward Bermudez, chief justice; and Felix P. Poché, Robert B. Todd, William M. Levy, Charles E. Fenner, associate justices.

Succession of WALTER O. WINN. On Trial of Opposition. No. 8211.

On application for rehearing.

It is ordered that our original decree herein be amended so far as it rejects the item of $266.62 for taxes paid by the executor, which item is now recognized as a just claim against the succession, and in all other respects our former opinion and decree are to remain undisturbed.

209 *Petition for Writ of Error.*

To the Hon. Edward Bermudez, chief justice of the supreme court of the State of Louisiana:

The petition of John S. Mayfield, of the State of Texas, respectfully represents that he feels aggrieved by the final judgment lately rendered against him by the honorable the supreme court of the State of Louisiana, in the case entitled Succession of Walter O. Winn, on trial of opposition, No. 8211 of the docket of said court, wherein your petitioner invoked the benefit of the act of Congress of the United States approved June 11th, 1864, entitled "An act in relation to the limitation of actions in certain cases," and of section 1048 of the Revised Statutes of the United States, and wherein, also, the validity of said statutes of the United States was drawn in question, and your petitioner was denied the benefit of said statutes by the decree of your honorable court, and the said decision was against the validity of said acts.

Petitioner further represents the executrix of William A.
210 Gasquet, deceased, has departed this life, and that his estate is represented by Louisa A. James, Eveline Marshall, wife of John R. Marshall, and Francis J. Gasquet, who have been put in possession by a decree of the probate court, and that Spofford Canfield, to whom his mother was tutrix (as well as tutrix to Mercer Canfield), having arrived at the age of majority, claims to represent his own interest in the judgment mentioned in the account.

Your petitioner further represents that the interest claimed by your petitioner in said court was adverse to the other parties to said decree, and none of them are willing, but, on the contrary, they decline to join petitioner in this application for a writ of error.

Wherefore petitioner prays your honor to allow a writ of error from the Supreme Court of the United States, with a supersedeas to issue in this case, upon such bond as may seem reasonable, and that citation may issue to the following-named parties, as defendants in

error, viz., Mary E. Richards and A. Keene Richards, her hus-
211 band, of the State of Kentucky; John D. DuBose and Louisa A. James, Eveline Marshall and her husband, John R. Marshall; Francis J. Gasquet, James Madison Wells, Jr., executor of the succession of Walter O. Winn, deceased; John S. Tarver, Mrs. Augusta Canfield, tutrix Spofford Canfield, and Robert J. Bowman, and any other persons who may appear to have an interest in said decree as defendant in error; and petitioner prays for general relief.

By E. T. MERRICK,
Of Counsel.

The foregoing petition being considered, it is ordered that a writ of error be allowed, as prayed for, to operate as a supersedeas, the said John S. Mayfield giving bond and security conditioned, according to law, in the sum of one thousand dollars.

New Orleans, Dec. 14, 1881.

(Signed) E. BERMUDEZ,
Chief Justice of La.

Filed 14 December, 1881. T. McC. HYMAN, *D'y Clerk.*

212 *Writ of Error. Filed December 14th*, 1881. *T. McC. Hyman, D'y Clerk.*

UNITED STATES OF AMERICA, *ss:*

The President of the United States of America to the honorable the judges of the supreme court of the State of Louisiana, Greeting:

Because in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said supreme court, before you or some of you, being the highest court of law or equity of the said State in which a decision could be had in the said suit between John S. Mayfield and Mary E. Richards, A. Keene Richards, John S. Tarver, Louisa A. James, Eveline Marshall and husband, John R. Marshall; Francis J. Gasquet, James M. Wells, Jr., executor; Augusta Canfield, tutrix Spofford Canfield, Robert J. Bowman, and John D. Dubose, wherein was drawn in question the validity of a treaty or statute of or an authority exercised under the United States, and the decision was against their validity, or wherein was
213 drawn in question the validity of a statute of, or an authority exercised under, said State, on the ground of their being repugnant to the Constitution, treaties, or laws of the United States, and the decision was in favor of such their validity, or wherein was drawn in question the construction of a clause of the Constitution, or of a treaty, or statute of, or commission held under the United States, and the decision was against the title, right, privilege, or exemption specifically set up or claimed under such clause of the said Constitution, treaty, statute, or commission, a manifest error hath happened to the great damage of the said John S. Mayfield, as by complaint appears: We being willing that error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be

therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at Washington on
214 the second Monday of October next, in said Supreme Court, to be then and there held, that the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error, what of right and according to the laws and customs of the United States should be done.

Witness the Honorable Morrison R. Waite, Chief Justice of the Supreme Court, the fourteenth day of December, in the year of our Lord one thousand eight hundred and eighty-one.

[SEAL.] F. A. WOOLFLEY,
Clerk of the Circuit Court of the United States for the Eastern District of Louisiana.

Allowed, with a supercedeas, by—

E. BERMUDEZ,
Chief Justice Supreme Court of Louisiana.

Endorsed: No. 8211. John S. Mayfield, plaintiff in error, *versus* Mary E. Richard and others, defendants in error. Copy of a writ of error lodged in the clerk's office of the supreme court of the State of Louisiana. Copy in pursuance of the statutes in such cases
215 made and provided this — day of December one thousand eight hundred and eighty-one. (Signed) E. T. Merrick, attorney of plaintiff in error. Supreme court of Louisiana. Filed 14th December, 1881. (Signed) George W. Dupré, clerk.

Bond for Writ of Error.

Know all men by these presents, that we, John S. Mayfield, of the State of Texas, and William M. Aiken, of the parish of East Carroll, and State of Louisiana, are firmly bound unto Mary E. Richards, A. Keene Richards, her husband, John D. DuBose, John S. Tarver, Louisa A. James, Eveline Marshall and her husband, John R. Marshall, Francis J. Gasquet, James M. Wells, Jr., executor, Augusta Canfield, tutrix, Spofford Canfield, and Robert J Bowman, and each and any of them, in the full and just sum of one thousand dollars, to be paid to the said obligees, their certain attorneys, executors, administrators, or assigns, to which payment, well and truly to be made, we bind ourselves, our heirs, executors, and administrators jointly and severally, by these presents.

216 Sealed with our seals, and dated this fourteenth day of December, in the year of our Lord one thousand eight hundred and eighty-one.

Whereas lately, at a term of the supreme court of the State of Louisiana, a final judgment, in the last resort, has been rendered by said supreme court of La., in a case entitled Succession of Walter O. Winn, No. 8211, against the said John S. Mayfield, and in favor of the said Mary E. Richards, A. Keene Richards, John D. DuBose, and others, obligees; and the said John S. Mayfield having obtained a writ in

error, and filed a copy thereof in the office of the clerk of the supreme court of the State of Louisiana, to reverse the judgment of the aforesaid suit, and citation directed to the said Mary E. Richards and others, admonishing them to be and appear at the Supreme Court of the United States, to be holden at Washington, the second Monday of October next:

Now, the condition of the above obligation is such, that if the said John S. Mayfield shall prosecute his writ to effect, and answer all damages and cost if he fail to make his plea good, then
217 the above obligation to be void; else to remain in full force and virtue.

JOHN. S. MAYFIELD,
By E. T. MERRICK, *Attorney.* [L. S.]
WM. M. AIKEN. [L. S.]

Sealed and delivered in the presence of—
E. T. MERRICK.

Approved. E. BERMUDEZ,
Chief Justice Supreme Court of Louisiana.

UNITED STATES OF AMERICA }
State of Louisiana, } *ss:*

Personally appeared William M. Aiken, who, being duly sworn, deposes and says: That he is the surety on the within bond; that he resides in the parish of East Carroll, State of Louisiana, and is worth the full sum of one thousand dollars over and above all his debts and liabilities and property exempt from execution, and that he is the owner of real estate in said parish and in New Orleans, La.

(Signed) WM M. AIKEN.

Subscribed and sworn before me, this 14th day of December, 1881.

(Signed) GEORGE W. DUPRÉ,
Clerk of Supreme Court of Louisiana.

Endorsed: No. 822. Supreme court. John S. Mayfield, plaintiff in error, *vs.* Mary E. Richards and others, defendants in error.
218 Bond for writ of error. Filed 14 December, 1881. (Signed) T. McC. Hyman, d'y clerk.

219 UNITED STATES OF AMERICA, *State of Louisiana.*

Supreme Court of the State of Louisiana.

In compliance with the writ of error issued in this case, I, George W. Dupré, clerk of the supreme court of the State of Louisiana, for the sessions thereof, held at the city of New Orleans, do hereby certify that the foregoing two hundred and seventeen (217) pages contain a full, true, and complete copy of the transcript of the proceedings had in the 12th judicial district court for the parish of Rapides, in the cause entitled Succession of Walter O. Winn, on the trial of

oppositions, and also of all the proceedings had in this supreme court, on the appeal taken by said John S. Mayfield and Mary E. Richards and husband, A. Keene Richards, and J. D. Dubose, which appeal is now on the files thereof, under No. 8211.

In testimony whereof, I have hereunto set my hand and affixed the seal of said court, at the city of New Orleans, the 30th day of June, anno Domini, one thousand eight hundred and eighty-two, and in the one hundred and fifth year of the Independence of the United States of America.

[SEAL.] GEORGE W. DUPRÉ, *Clerk.*

220 *Certificate of the Chief Justice.*

UNITED STATES OF AMERICA, *State of Louisiana:*

Supreme Court of the State of Louisiana.

I, Edward Bermudez, chief justice of the supreme court of the State of Louisiana, do hereby certify that George W. Dupré is clerk of the supreme of the State of Louisiana, holding session at the city of New Orleans; that the signature of George W. Dupré to the within certificate is in the proper handwriting of him, the said clerk; that said certificate is in due form of law, and that full faith and credit are due to all of his official acts as such.

In testimony whereof, I have hereunto set my hand and seal, at the city of New Orleans, this 30th day of June, anno Domini one thousand eight hundred and eighty-two, and the one hundred and fifth year of the Independence of the United States of America.

[SEAL.] E. BERMUDEZ,
Chief Justice.

221 THE UNITED STATES OF AMERICA:

Supreme Court of the State of Louisiana.

The President of the United States to James M. Wells, Jr., administrator, Greeting:

You are hereby cited and admonished to be and appear at a Supreme court of the United States to be holden at the city of Washington, on the second Monday of October next, pursuant to a writ of error filed in the clerk's office of the supreme court of the State of Louisiana, wherein John S. Mayfield is plaintiff in error and you are (with others) defendant in error, to show cause, if any there be, why the judgment rendered against the said John S. Mayfield, as in said writ of error mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness the Honorable Morrison R. Waite, Chief Justice of the Supreme Court of the United States, this fourteenth day of December, in the year of our Lord one thousand eight hundred and eighty-one.

[SEAL.] E. BERMUDEZ,
Chief Justice.

222 [Endorsed:] United States circuit court. No. —. John S. Mayfield, plaintiff in error, *vs.* Mary E. Richards *et al.*, def'ts in error. Citation.

I, R. J. Bowman, being duly sworn, says, on oath: That I served a duplicate original of the within citation on J. M. Wells, Jun'r, executor of Walter O. Winn, in the town of Alexandria, on the 30 of January, 1882.

R. J. BOWMAN.

Sworn to & subscribed before me, on this 6th day of Feb., 1882.

[SEAL.] GEORGE O. WATTS,
Clerk of the 12th Judicial Dist. Court, in & for Parish of Rapides, Louisiana.

223 THE UNITED STATES OF AMERICA:

Supreme Court of the State of Louisiana.

The President of the United States to John D. Dubose, Greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States to be holden at the city of Washington, on the second Monday of October next, pursuant to a writ of error filed in the clerk's office of the supreme court of the State of Louisiana, wherein John S. Mayfield is plaintiff in error and you (with others) are defendant in error, to show cause, if any there be, why the judgment rendered against the said John S. Mayfield, as in said writ of error mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness the Honorable Morrison R. Waite, Chief Justice of the Supreme Court of the United States, this fourteenth day of December, in the year of our Lord one thousand eight hundred and eighty-one.

[SEAL.] E. BERMUDFZ, *Chief Justice, La.*

224 [Endorsed:] United States circuit court. No. —. John S. Mayfield, plaintiff in error, *vs.* Mary E. Richards *et al.*, def'ts in error. Citation.

R. J. Bowman, being duly sworn, on oath saith: That on the 22 Dec., 1881, he served a duplicate original of this citation on the within-named John D. Dubose by delivering the same to his counsel and attorney of record, James Andrews, Jr., in the town of Alexandria and State of La.

R. J. BOWMAN.

Sworn to & subscribed before me, on this 23 day of December, 1881.

[SEAL.] G. O. WATTS,
Cle'k 12th Judic. Dist. Court, Rapides Parish, La.

225 THE UNITED STATES OF AMERICA:

Supreme Court of the State of Louisiana.

The President of the United States to John S. Tarver, Greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States to be holden at the city of Washington, on the second Monday of October next, pursuant to a writ of error filed in the clerk's office of the supreme court of the State of Louisiana, wherein John S. Mayfield is plaintiff in error and you (with others) are defendant in error, to show cause, if any there be, why the judgment rendered against the said John S. Mayfield, as in said writ of error mentioned, should be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness the Honorable Morrison R. Waite, Chief Justice of the Supreme Court of the United States, this fourteenth day of December, in the year of our Lord one thousand eight hundred and eighty-one.

[SEAL.] E. BERMUDEZ,
Chief Justice of La.

226 [Endorsed:] United States circuit court. No. —. John S. Mayfield, plaintiff in error, *vs.* Mary E. Richards *et al.*, def'ts in error. Citation.

Return.

I, R. J. Bowman, being duly sworn, on oath saith: That I served a duplicate original of the within citation on John S. Tarver by handing the same to Thomas C. Manning, his counsellor and attorney of record, in the town of Alexandria, & on the 24 of December, 1881.

R. J. BOWMAN.

Sworn to & subscribed before me, on this 27 December, 1881.

[SEAL.] GEORGE O. WATTS,
Clerk 12th Judicial Dist. Court, Rapides Parish, La.

227 THE UNITED STATES OF AMERICA:

Supreme Court of the State of Louisiana.

The President of the United States to Augusta Canfield, tutrix, and to Spofford Canfield, Greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States to be holden at the city of Washington, on the second Monday of December next, pursuant to a writ of error filed in the clerk's office of the supreme court of the State of Louisiana, wherein John S. Mayfield is plaintiff in error and you are (with others) defendants in error, to show cause, if any there be, why the judgment rendered against the said John S. Mayfield, as in said writ of error mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness the Honorable Morrison R. Waite, Chief Justice of the Supreme Court of the United States, this fourteenth day of December, in the year of our Lord one thousand eight hundred and eighty-one.

[SEAL.] E. BERMUDEZ,
Chief Justice.

228 [Endorsed:] United States circuit court. No.—. John S. Mayfield, plaintiff in error, *vs.* Mary E. Richards *et al.*, def'ts in error. Citation.

I, R. J. Bowman, being duly sworn, says on oath: That he served a duplicate original of the within citation on Augusta Canfield, tutrix, on the 31st of December, 1881, in person, in the office of Jas. Andrews, Jr., in the town of Alexandria, in the State of Louisiana.
R. J. BOWMAN.

Sworn to & subscribed before me, on this 23 day of January, A. D. 1882.

[SEAL.] GEORGE O. WATTS,
Clerk 12th Judicial Dist. Court, Rapides Parish, La.

I, R. J. Bowman, being duly sworn, say on oath: That he served a duplicate original of the within citation on Spofford Canfield, on the 23 of February, 1882, in person, in the office of M. Ryan, in the town of Alexandria, in the State of Louisiana.
Feb. 23, 1882. R. J. BOWMAN.

Sworn & subscribed before me, this 23 Jan'y, 1882.

[SEAL.] GEORGE O. WATTS,
Clerk 12th Judicial Dist. Court, Rapides Parish, La.

229 THE UNITED STATES OF AMERICA:

Supreme Court of the State of Louisiana.

The President of the United States to Louisa A. James, Eveline Marshall and her husband, John R. Marshall, and Francis J. Gasquet, Greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, to be holden at the city of Washington, on the second Monday of October next, pursuant to a writ of error filed in the clerk's office of the supreme court of the State [of] Louisiana, wherein John S. Mayfield is plaintiff in error and you are (with others) defendants in error, to show cause, if any there be, why the judgment rendered against the said John S. Mayfield, as in said writ of error mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness the Honorable Morrison R. Waite, Chief Justice of the Supreme Court of the United States, this fourteenth day of Decem-

ber, in the year of our Lord one thousand eight hundred and eighty-one.

[SEAL.] E. BERMUDEZ,
Chief Justice, La.

230 [Endorsed:] United States circuit court. No. —. John S. Mayfield, plaintiff in error, *vs.* Mary E. Richards *et al.*, def'ts in error. Citation.

Return.

I, R. J. Bowman, being duly sworn, on oath saith: That I served a duplicate original of the within citation on Laura A James, Eveline Marshall & her husband, John R. Marshall, & on Francis J. Gasquet by handing the same to Thomas C. Manning, their counsellor & attorney of record, in the town of Alexandria, on the 24th December, 1881.

R. J. BOWMAN.

Sworn to & subscribed before me, on this 27th day of December, 1881.

[SEAL.] GEORGE O. WATTS,
Clerk 12th Judicial Dist. Court, Rapides Parish, La.

231 THE UNITED STATES OF AMERICA:

Supreme Court of the State of Louisiana.

The President of the United States to Robert J. Bowman, Greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, to be holden at the city of Washington, on the second Monday of December next, pursuant to a writ of error filed in the clerk's office of the supreme court of the State of Louisiana, wherein John S. Mayfield is plaintiff in error and you are, with others, defendant in error, to show cause, if any there be, why the judgment rendered against the said John S. Mayfield, as in said writ of error mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness the Honorable Morrison R. Waite, Chief Justice of the Supreme Court of the United States, this — day of December, in the year of our Lord one thousand eight hundred and eighty-one.

[SEAL.] E. BERMUDEZ,
Chief Justice, La.

232 [Endorsed:] United States circuit court. No. —. John S. Mayfield, plaintiff in error, *vs.* Mary E. Richards *et al.*, def'ts in error. Citation. I hereby accept service of the within citation. Dec. 17, 1881. Robert J. Bowman.

233 THE UNITED STATES OF AMERICA:

Supreme Court of the State of Louisiana.

The President of the United States to Mary E. Richards and A. Keene Richards, her husband, Greeting:

You are hereby cited and admonished to be and appear at a Su-

preme Court of the United States to be holden at the city of Washington, on the second Monday of October next, pursuant to a writ of error filed in the clerk's office of the supreme court of the State of Louisiana, wherein John S. Mayfield is plaintiff in error and you (with others) are defendants in error, to show cause, if any there be, why the judgment rendered against the said John S. Mayfield, as in said writ of error mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness the Honorable Morrison R. Waite, Chief Justice of the Supreme Court of the United States, this fourteenth day of December, in the year of our Lord one thousand eight hundred and eighty-one.

[SEAL.] E. BERMUDEZ,
Chief Justice, La.

234 [Endorsed:] United States circuit court. No. —. John S. Mayfield, plaintiff in error, *vs.* Mary E. Richards *et al.*, def'ts in error. Citation.

Return.

E. T. Merrick, Jr., being duly sworn, on oath saith: That he, this 14th day of December, 1881, served a duplicate original of this citation on the within named Mary E. Richards and A. Keene Richards, by delivering the same to their counsel and attorney of record, Gus. A. Breaux, of the firm of Breaux and Hall, at their office in the city of New Orleans.

E. T. MERRICK, JR.

Sworn to and subscribed before me, this 15 Dec'r, A. D. 1881.
[SEAL.] T. McC. HYMAN, *D'y Clerk.*

R. J. Bowman, being duly sworn, on oath saith: That on the 22nd of December, 1881, he served a triplicate original of this citation on the within named Mary E. Richards and A. Keene Richards, by delivering *delivering* the same to their counsel and attorney of record, W. F. Blackman, at his office in the town of Alexandria and State of La.

R. J. BOWMAN.

Sworn to and subscribed before me, on this 23 Dec., 1881.
G. O. WATTS,
Clerk 12th Dist. Court, Rapides Parish, La.

Endorsed on cover: Louisiana supreme court. No. 264. John S. Mayfield, plaintiff in error, *vs.* Mary E. Richards, A. Keene Richards, John S. Tarver, Louisa A. James, *et al.* Filed 15th September, 1882.

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SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1884.—No. 264.

JOHN S. MAYFIELD, Plaintiff in Error,

vs.

MARY E. RICHARDS, A. KEENE RICHARDS, *et al.*

It is agreed between the counsel for the plaintiff and defendants in error that the clerk of the supreme court of Louisiana shall certify the petition filed for a rehearing before the supreme court of Louisiana by said John S. Mayfield, through his attorneys and counsel to the Supreme Court of the United States, without an application for, or the issuance of, a writ of certiorari, said petition for a rehearing having been omitted from the transcript.

GUS. A. BREAM,
Solicitor for Def's in Error.
E. P. MERRICK,
For Plaintiff in Error.

Nov. 5, 1884.

1 Supreme Court of Louisiana, Clerk's Office. Filed May 30th, 1881. George W. Dupre, Clerk.

Succession of Walter O. Winn. No. 8211.

To the hon. the chief and associate justices of the supreme court of Louisiana:

The petition of John S. Mayfield, one of the parties to this suit, for a rehearing under article 912 C. P., respectfully represents that petitioner is dissatisfied with the judgment rendered by this hon. court in this case, and he thinks the judgment erroneous, for the following, among other, reasons:

This hon. court has denied and refused to petitioner the benefit of the act of Congress of the United States approved June 11, 1864, 13 Statutes at Large, 123, chapter CXVII, and section 1048 of the Revised Statutes of the United States relied on in the lower court and before this court & referred to and fully cited in the opinion of this hon. court on file in this case.

The said laws of the United States exempt this petitioner's demand or claim in this case (allowed in the tableau of distribution) from the force of the laws of prescription of the States of Louisiana and Texas, during the existence of the so-called rebellion, and during the time in which it was impossible, by reason of the resistance to the execution of the laws of the United States and the interruption of

the ordinary course of judicial proceedings for said Rotchford, Brown & Co., or any other holder of petitioner's said promissory and mortgage notes, to make service of process for the commencement of suit on the same on said executrix, or any other representative of said succession of said Walter O. Winn, deceased, but, on the contrary, this hon. court has decided that the prescription of five years mentioned in the Civil Code of Louisiana had run against said promissory notes prior to January, 1866, notwithstanding said act of Congress, and that petitioner's promissory and mortgage notes against said estate were barred by lapse of five years, and that neither the rebellion nor the inability of Rotchford, Brown & Co., as aforesaid, to serve pro-
2 cess for the commencement of an action against the representative of the estate of said Walter O. Winn, on account of said promissory notes, could have any influence, under the laws of Congress, to relieve petitioner's said promissory and mortgage notes from the prescription of five years.

Petitioner respectfully represents that he thinks the act of Congress and art. 1048 of the U. S. Rev. Statutes ought to be applied in petitioner's favor, as it has heretofore been in like cases, both by the Supreme Court of the United States and the supreme court of the State of Louisiana. He prays the court to reconsider the question and review the decisions cited in the briefs, as well as the other points relied on by petitioner in his original brief.

Wherefore petitioner prays that the judgment heretofore pronounced by your hon. court against petitioner's claim as allowed on the tableau of distribution be set aside, and that petitioner's claim, as allowed by the lower court, be recognized by the decree of this hon. court, and for general relief.

R. A. & ROB'T T. HUNTER, &
MERRICK, RACE & FOSTER,
For Petitioner.

UNITED STATES OF AMERICA, *State of Louisiana:*

Supreme Court of Louisiana.

I, George W. Dupre, clerk of the supreme court of the State of Louisiana, holding sessions at the city of New Orleans, do hereby certify that the foregoing three (3) pages contain a true copy of a petition for a rehearing filed in this court on the 30th May, 1881, in the case entitled Succession of Walter O'Winn, No. 8211 of the docket of said supreme court, from which a writ of error was taken to the Supreme Court of the United States by John S. Mayfield, the same bearing the title mentioned in the foregoing and in the annexed agreement. The said document having been omitted from the record entitled John S. Mayfield, plaintiff in error, *vs.* Mary E. Richards *& als.*, No. 264 of the docket of the Supreme Court of the United States, October term, A. D. 1884.

In testimony whereof, I have hereunto set my hand and seal, this 7th day of November, A. D. 1884.

[SEAL.] GEORGE W. DUPRE, *Clerk.*

3 UNITED STATES OF AMERICA.

Supreme Court of the State of Louisiana.

I, Edward Bermudez, chief justice of the supreme court of the State of Louisiana, do hereby certify that George W. Dupre is clerk of the supreme court of the State of Louisiana, holding sessions at the city of New Orleans, and the signature of George W. Dupre to the within certificate is in the proper handwriting of him, the said clerk; that said certificate is in due form of law; and that full faith and credit are due to all of his official acts as such.

In testimony whereof, I have hereunto set my hand and seal, at the city of New Orleans, this 7th day of November, Anno Domini 1884.

[SEAL.] E. RERMUDEZ,
Chief Justice Supreme Court of Louisiana.

Cost of copy, $2.40.

[Endorsed:] U. S. Supreme Court, Oct. T., 1884. No. 264. John S. Mayfield, plaintiff in error, *vs.* Mary E. Richards, A. Keene Richards *et al.* Agreement as to the completion of record, record & return of clerk completing record, *certiorari* being waived.

Endorsed on cover: Supreme Court U. S., 1884, October term. No. 264. John S. Mayfield, pl'ff in error, *vs.* Mary E. Richards *& al.* Stipulation of counsel & addition to record. Filed Nov. 14, 1884.

115-137

Office Supreme Court U. S.
FILED
FEB 3 1885
JAMES H. McKENNEY,
CLERK.

Supreme Court of the United States.

No. 264., OCT. T., 1884.

JOHN S. MAYFIELD, PLAINTIFF IN ERROR,

versus

MARY E. RICHARDS, A. KEENE RICHARDS ET AL., DEFENDANTS IN ERROR.

Statement of the Case; Assignment of Error; and Brief of Plaintiff in Error.

E. T. MERRICK,
for Plaintiff in Error.

Hopkins' Printing Office, 22 Commercial Place, New Orleans.

Supreme Court of the United States.

No. 264., OCT. T., 1884.

JOHN S. MAYFIELD, PLAINTIFF IN ERROR,

versus

MARY E. RICHARDS, A. KEENE RICHARDS ET AL., DEFENDANTS IN ERROR.

Statement of the Case; Assignment of Error; and Brief of Plaintiff in Error.

STATEMENT OF THE CASE.

The writ of error has been taken from an express refusal of the Supreme Court of Louisiana to give effect to the Act of Congress, approved June 11th, 1884, (Rev. Statutes. sec. 1048) on the ground (as that court says) that the act of Congress does not bind the State court. The act of Congress referred to exempts from the statutes of limitation the time *during* the existence of the rebellion, in which by reason of resistence to the laws of the United States, or the interruption of the ordinary course of judicial proceedings, actions, ~~can~~ could not be commenced.

The facts of the case, about which no question has been made, show that *no suit* for the reasons mentioned in the act of Congress could have been commenced by Rotchford, Brown & Co., the then *holders* of the nine notes of $5000 each, and interest, against Mrs. Richards, then Mrs. Winn, executrix of the estate of Walter O. Winn, deceased, (or the estate) mentioned and allowed in the account of Wells,the new executor—Record, p. 2, bottom of page.

The *District Court* of the State of Louisiana, gave effect to the act of Congress and rendered judgment in favor of the plaintiff in error. Record, pages 66 and 67

An appeal having been taken to the Supreme Court of Louisiana, this judgment was reversed, and the force of the act of Congress was denied. Record, p. 79.

On the face of the papers the mortgage notes of Mayfield, amounting to $45,000, and interest. appear to have been acknowledged within the five years. Record, p. 41–45.

The denfendant in error offered proof to show that her acknowledgments in the notes, as executrix, were made in January, 1866, instead of November 1st, 1885.

The district court admitted the evidence. See bill of exceptions. Record, 65. Testimony of Mrs. Richards, defendant in error, 48.

Now, the district court, under the pleadings and evidence allowing proof to show that the acknowledgments were not made until after the five years,

could not have rendered judgment in favor of the plaintiff without giving effect to the act of Congress.

The Supreme Court of Louisiana assumes and finds a state of facts existing, which would entitle the plaintiff in error to judgment, if the act of Congress should be considered applicable to the State courts. So, that, aside from the petition for a rehearing, and review, the question as to the force of the act of Congress, appears much more clearly upon the record, than it did in Stewart vs. Kahn, 11 Wallace, 493, in which case the writer of this brief held the same ground as his adversaries do in this case.

Before proceeding further with the statement of the case we wish to observe that there are some immaterial errors, either in the printing or transcribing the record, such as using the word "reversed" for "recused," p. 28; and on page 76, the word devotion for destitution.

On page 71 of the record is a *motion* to dismiss the appeal in the Louisiana Supreme Court. with the hoped for and contemplated order, making a part of the motion. This motion *was not* granted by the court, nor entered on the minutes of the court. *It is, therefore, without effect,* the case having been finally decided by the Supreme Court, as we shall see, on the ground that the act of Congress of June 11th, 1864, does not bind the State courts.

The main facts, so far as it respects Mayfield's rights, which culminated in the decree of the Supreme Court of Louisiana against him on the construction of the act Congress. appears by the record to have arisen, in this manner;

On the 30th of March, 1860, Walter O. Winn, a wealthy planter of the parish of Rapides and State of Lonisiana, executed in favor of the house of Rotchford, Brown & Co. of New Orleans, nine promissory notes of $5000 each, making the sum of $45,000, sesecure by mortgage on a plantation in the parish of Carroll, in the same State, and made them payable to the order of that firm November 10th, 1860. See notes and acknowledgments of Mrs. Winn, executrix, Record, pages 41 to 45.

These notes purport by said written indorsements thereon, to have been acknowledged by the executrix within the prescription of five years, viz: November 1st, 1865. Proof, however, was admitted, as we have seen, by the district court, 65, to show that they were not really acknowledged until about the first of January, 1866, forty or fifty *days after the five years from maturity had elapsed.* The whole case turns *on the effect* of the breaking up of the courts, by the military operations, the resistence to the law of the United States, and the absence of defendant, Mrs. Winn, the executrix, as a refugee in Texas, has on this period of forty or fifty days.

This Mrs. Mary E. Winn, the executrix, married Mr. A. Keene Richards. She is the principal defendant in error, and has the largest interest in maintaining the decree of the State Supreme Court. It is thus apparent that Mrs. Winn, the widow, executrix and universal legatee of Walter O. Winn, deceased, and Mrs. Richards is the same person, although she may be spoken of by either name.

It is very clear, as we have said, that after Judge Barbin, the District judge, had admitted proof to show that Mrs. Winn did not sign the acknowledgment of the promissory notes held by Mayfield, or Rotchford Brown & Co., until January, 1866, that he could not have rendered judgment in Mayfield's favor without giving effect to the act of Congress, and following the decisions of Stewart vs. Kahn, 11 Wall. 493, Aby vs Bingham, curator. 28 La. An. 840.

The facts on which the case rested in the District Court were also, as we said, conceded by the Supreme Court of Louisiana, and the judgment of the lower court in Mayfield's favor (Rec. 66, 67) was reversed and judgment rendered against him on the express ground that, although the executrix left Louisiana and absented herself as a refugee in the State of Texas during the war, and although the courts were closed in the parish of Rapides by Gen. Banks, military operations with the armies of the United States and the proclamation of the President, made it impossible for Rotchford, Brown & Co., of the city of New Orleans, within the Federal lines, or John S. Mayfield, at that time in the same city, to sue any one in the parish of Rapides, and much less a fugitive executrix, yet we say the court held the act of Congress was without influence in the case.

Proceeding to specify further and more particularly the facts apparent from the testimony serving as the statement of facts according to the Louisiana practice, we find that Walter O. Winn died in 1861, having made a will in favor of his wife, Mrs. Winn, now

Mrs. Richards, as judicially determined in her favor. (Rec. p. 38.) The records of the estate, as well as all the other public records of the parish of Rapides were destroyed during Gen. Banks' expedition to Alexandria in May, 1864. Rec. p. 10.

During the war Mrs. Richards, the executrix and universal legatee, as we have seen, resided in Texas, where she had removed with all her slaves and personal effects, and she did not return to Louisiana until about the first of January, 1866. p. 9, p. 48.

During the war Rotchford, Brown & Co. resided in New Orleans, within the Federal lines, after its capture in May, 1862 (Rec. p. 11, test. Hunter), and were prohibited by the laws of the United States from bringing suits or holding intercourse with any one in Rapides parish, outside those lines. Rec. p. 9. They indorsed the notes as payees.

The plaintiff in error, Mayfield, is a citizen of Texas. His allegations of citizenship have not been put at issue.

Shepherd Brown, of the firm of Rotchford, Brown & Co., had the notes when they were acknowledged in January, 1866. It seems that Mayfield acquired the notes in 1866, after Brown had had them acknowledged. Rec. 11, 9, 48

There was no United States court having power to enforce its jurisdiction, at the instance of Mayfield, over the parish of Rapides, where alone the estate could be administered. After the destruction of the court house and public records, in May, 1864, *there were no judges, clerks, sheriffs, or courts to which any-*

body could apply for process or for justice until the military appointment, through Governor Wells, of Judge Ryan, in July, 1865 (p. 9 and 10), and no service of process could have been made. Rec. 10.

Aside from the proof in the record the court has judicial cognizance of many of these facts as a matter of history, such as Gen. Banks' march through the Teche and Opelousas, and occupation of Alexandria, in 1863, and the subsequent Red River expedition, in 1864, in which Alexandria was for several months in the military occupation of the Federal armies *in active war*, and during which time the authority of the State courts, if there had been any, would have of necessity ceased.

It is shown on page 10 of record that—

"The United States had no jurisdiction over the "parish of Rapides during the war, except a military "one; there were no courts here during the war ex- "cept Confederate courts." * * * *

"The Federal troops came here" (Alexandria) "the first time in May, 1863. They remained but a "short time. They came on the 17th March, 1864, "and remained until about the 15th May. After they "burnt the town they were two or three days getting "out of the parish. *There was a state of disorganiza-* "*tion here at that time, before they came, and after they* "*went away. There was no court nor officers after* the "burning of the court house until after I was appoint- "ed judge." (July 9, 1865). "There were no lawyers "here at that time. No personal service would" (could) "have been made upon Mrs. Winn from the time the

" court house was burned until the cause" (she) " came " back here in December, and then she did not remain " here." Judge Ryan, Rec. p. 10.

(There is, as above, also, an evident misprint on page 20, which states the death of Walter O. Winn to have been in March or April, 1864, instead of 1861.)

Mrs. Richards took possession of the estate under the will of W. O. Winn, as executrix, and although not put in possession by any decree of court, she sold some of the property to E. M. and J. M. Wells in 1862, before she moved to Texas as a refugee. pp. 25, 26.

After the burning of the court house records in 1864 nothing was done with the estate of Walter O. Winn until the return of Mrs. Richards, after Christmas, 1865, or about January 1st, 1866. She says over her own signature that she knows that she acknowledged the notes between the first and tenth day of January, 1866, " Because she was in Texas in Novem- " ber, 1865, and did not return here to Alexandria " until subseqent to the 25th day of December, 1865, " where she remained several days and went to New " Orleans." Rec. p. 48.

After her return suits were brought against her as executrix as early as 1866, and she has from that time to this successfully resisted the creditors and absorbed her deceased husband's large estate. The records of these suits, as well as other appeals, are found in the transcript in this case, but it does not seem important to make any particular reference to them. The judgment creditors have been made defendants in error.

John S. Tarver and Widow Gasquet refused to join in the writ of error, they holding adverse interests. They were made defendants in error, being parties to the judgment. Rec. p. 83, p. 3, p. 89-90.

Mrs. Winn having forfeited her rights as executrix, J. M. Wells, Jr., was appointed executor in her stead to administer the estate. On the 5th day of July, 1880, he filed his account of the Winn estate in that capacity. Rec. p. 1. In this account the plaintiff in error was set down as a creditor for $45,000, the amount of the nine acknowledged notes and interest. Rec. p. 2. The validity of these notes had been previously determined by the Supreme Court of Louisiana on a former appeal when a plea of prescription had been filed against them, on the ground that after their acknowledgment, suit was not again brought within five years. *The fact* was found by the lower and Supreme courts against the plea. See 27 A. p. 687. Since that time it has been settled by the Supreme Court that no prescription runs against the acknowledgment of an executor or administrator until the estate is settled, so all other questions, it will be seen, are eliminated from the case.

Renshaw vs. Stafford, 30 A. 856.

Cloutier vs. Lemee, 33 A. 308.

Succession of Romero, 29 A. 493.

Porter vs. Hornsby, 32 A. 337.

Under the Louisiana law every one having an interest in the executor's account has a right to file what is called a *third opposition* to the same, and such op-

position forms a part of the pleadings in the cause. The issue we have to deal with was made by Mrs. Richards and Mr. Dubose in opposing the account of the administrator allowing Mayfield his credit of $45,000 and interest. Rec. p. 2. Mrs. Richards opposes the account filed by Wells, executor, allowing the *nine notes* of Mayfield, and setting them down for payment as ordinary debts on the alleged ground " that the notes are prescribed and were prescribed at " the date they were accepted by the executrix, the " date of the acceptance being written on the back of " the notes long before they were accepted by the ex- " ecutrix and accepted in error." The prescription of "*five years* she specially pleads as a bar to said " claim." Rec. 6.

Dubose pleads the prescription of *five* years to Mayfield's demand and " He further shows that said " nine notes were all prescribed long before they were " pretended to be acknowledged by the executrix, " Mrs. Mary E. Winn, and that the acknowledgment " was made by her in the city of New Orleans, Lou- " isiana, in January or February, 1866, and not on the " first day of November, 1865, as it purports." He also pleads the prescription of ten years. Rec. 7.

It is not necessary to say that the arguments of the learned counsel for Mrs. Richards on these pleadings were the same as those subsequently set forth by the Louisiana Supreme Court, viz; against the validity of the act of "Congress. They said in their " printed brief;

" In the first place, it is contended that the Con-
" gress of the United States had no authority to pass
" the act, fixing the limitation of actions of a State,
" and could not annul or supersede State legislation
" on that subject."

" The act of Congress may be binding on Federal
" but not on State courts. State courts must be gov-
" erned by State laws, unless the same are in viola-
" tion of the Constitution of the United States or of
" the State."

There was, it is thus seen, no ground for the reversal of the decree of the district court, but by denying that the act of Congress, above referred to, was binding on the State courts.

The Supreme Court of Louisiana in a very elaborate opinion stated the contention growing out of the undisputed state of facts and their reasons as follows:

III.

" THE COUNSEL FOR MAYFIELD and for the exe-
" cutor, however, *urge with great earnestness*, that even
" admitting that the acknowledgment of the notes was
" not made *within the five years, prescription on the*
" *notes was suspended by and during the war*, and ALSO
" by the effect and under *the operation of the* act Con-
" gress, embraced in section 1048, United States
" Revised Statutes." Upon the first ground of sus-
" pension urged, whatever opinion we might entertain
" respecting it were the question a new one, we must
" consider it put at rest by the repeated and uniform
" decisions of this court running through many years.

" These decisions declare in unmistakable terms that " the war between the States did not operate a sus- " pension of prescription. Upon the principle of State " decrees, we do not feel authorized to disturb them. " 19 A. 187; 20 A. 280, 363, 413, 427; 21 A. 76, 106, " 126; 22 A. 111, 23 A. 553, 748."

" The act of Congress relied on as operating as a " suspension of prescription in this case reads as fol- " lows; (The italics in this paragraph are by the " court.)

" In all cases where, during the late rebellion, " any person could not by reason of residence " to the execution of the laws of the United States, " *or of the interruption of the ordinary cause of judicial* " *proceedings*, be served with process for the com- " mencement of any action, civil or criminal, which " had accrued against him the time, during which such " person was beyond the reach of legal process, shall " not be taken as any part of the time limited by law " for the commencement of such action "

" The most natural inferrence to be drawn from " the reading of this statute is, that it is applicable " alone to actions and proceedings in the Federal " courts, and intended to establish a rule of practice " therein on the subject mentioned. We cannot " readily conceive that it was designed as a law to " govern the States and State courts, and that in fact " it was virtually to constitute an amendmeut to our " code, making an addition to the causes of suspension " of prescription therein enumerated."

" We supposed, if there was any one subject ex-
" clusively within the control of the State government,
" it was that which related to the organization of the
" State courts, defining the different kinds of actions,
" prescribing the time they must be instituted, and in
" fine, establishing a system of practice for the regula-
" tion and government of said courts. This was a
" power inherent in all sovereignties, and which the
" States have exercised to the fullest extent before
" they became members of the Federal union, and
" which it was not supposed they had parted with or
" impaired by any delegation of the power, express or
" implied, to the Federal government." Record,
" pages 77 and 78.

After pursuing this line of argument, somewhat further, the Supreme Court of Louisana, referring to the decisions of this high court, then says (Rec. p. 78): " And notwithstanding our profound respect for that " august tribunal, we cannot yield our firm and con-
" scientious convictions on this subject to an isolated
" decision of the Supreme Court of the United States
" (Stewart vs. Kahn, 11 Wall. 493), *which held that*
" *this Federal Statute was applicable to proceedings in*
" *State courts*, nor are our convictions changed by the
" legal subtlety displayed in the constitutional authority
" of Congress thus to legislate for the government of
" the State courts and to fix the prescription *of actions*
" *therein under the war-making power.* We say iso-
" lated decision, for the reason that it is the only one
" we find in which the decision was rendered on ap-
" peal from a State court, and where *it is distinctly an-*

" *nounced that the statute in question applied to and* " *controlled proceedings* in State courts, every other " case in which the effect of the statute at issue having " been instituted in the Federal courts and such effect " not having been expressly extended to the State " courts."

" Nor are we any more impressed with the au- " thority of a decision of the Supreme Court of this " State, 28 A. 840 (Aby vs. Brigham, curator), in- " voked, which contains a mere dictum on the point " without comment or reason, and shows nothing on " the face of it but an acquiescence in an authority, " which if universally conceded and exercised in *pari* " *materia*, can successfully evade every subject here- " tofore acknowledged to pertain to the domestic af- " fairs and institutions of a State, and supplant the " rights of action, the mode of procedure or practice " of the State courts by other systems, modes and " measures framed and supplied by congressional le- " gislation." Rec. 78, 79.

" The last case referred to, to the extent of the " authority of this court may be considered overruled."

" Under this view of the subject we conclude that " that the claim of Mayfield was prescribed when ac- " knowledged by the executrix, and that acknowledg- " ment after prescription had run was without legal " effect against the succession or any person interested " therein."

" This, then, disposes also of the questions raised " by the opposition of Mayfield, who being without in- " terest has no right to oppose the claims of others or " raise issues touching any of the proceedings."

Thereupon the Supreme Court reversed the judgment of the District Court recognizing Mayfield as a creditor of Walter O. Winn, deceased, on the tableau of distribution for said $45,000 and interest, and rendered a final judgment against him May 23d, 1881. Rec. p. 80.

On the 30th day of May, 1881, John S. Mayfield filed a petition for a rehearing signed by counsel *setting up as a ground* of rehearing *the Act of Congress* of June, 1864. 13 Stat. at Large, 123, and the U. S. Rev. Stat. sec. 1048.

The petition for a rehearing was brought up by consent on a suggestion of a diminution of the record. It has been printed *and is annexed to the record with the agreement of counsel.*

The petition for a rehearing was filed the same day as was Mr. Bowman's (Rec. p. 80), and was refused by the Supreme Court necessarily by ordering that their former decree remain undisturbed. Rec. p. 83.

A writ of error from this court with a supersedeas was taken to the decision of the Supreme Court of Louisiana.

ASSIGNMENT OF ERRORS.

And now comes the said John S. Mayfield, the plaintiff in error in this case, and under the rule of this hon. court, said plaintiff in error says there is manifest error in the record and proceedings in this case before the said Supreme Court of the said State of Louisiana, being the highest court of said State in which a decree in said cause could be had, in this, viz:

First—The said Supreme Court of the State of Louisiana by the rendition of the final judgment and decree in said cause against the said John S. Mayfield, and by its refusal to grant a rehearing manifestly erred by refusing to allow him the benefit of, and by refusing to give effect to the Act of Congress of the United States of America, approved on the 7th day of June, A. D. 1864, being found in 13th volume Statutes at Large of the United States, page 123, chapter cxviii., and U. S. Rev. Stat. sec. 1048, which exempted the said demand of the said John S. Mayneld against the said succession of the said Walter O. Winn, deceased, mentioned and proposed to be allowed by said J. M. Wells, Jr., executor, for $45,000 and eight per cent interest thereon from 30th March, 1860, from the operation and effect of the statutes and laws of limitation of actions of the State of Louisiana, commonly called the prescription of actions, during the period of the late rebellion, in which by reason of resistance to the execution of the laws of the United States and of the ordinary course of judicial proceedings during said rebellion, neither the said Mary E. Winn, individually, nor as the executrix of the last will and testament of said Walter O. Wynn, dec'd, nor any other person, if such there had been, with capacity to represent the estate and succession of said Walter O. Winn, deceased, in a court of justice, could be served with process for the commencement of any action; but the said Supreme Court of Louisiana, contrary to said Act of Congress, decided against the said right, privilege and immunity set up and claimed by said John S. Mayfield in this case under said Act of Congress of June 11, 1864, and said section 1048

of the Revised Statutes of the United States, and decided and held that said Act of Congress of the United States had no force, validity, effect or authority in the State of Louisiana so far as it respected any of the courts held under and by virtue of the authority of the State of Louisiana, and notwithstanding that by reason of the said resistance to the execution of the laws of the United States, and of the interruption of the ordinary cause of judicial proceedings, the said Mary E. Winn, individually and as executrix, as well as other persons, could not be served with process for the commencement of any action, which had accrued against her or them, that the prescription of five years conitnued to run from the maturity of said promissory notes, during said rebellion, and by reason thereof during said period, said five years prescription was a bar to said Mayfield's action and right to be paid the said sum of money and interest, allowed said Mayfield, both upon said executor's account and by the said decree of the Judge of the twelfth judicial district court of Louisiana, and said Supreme Court erroneously disallowed by its final judgment, and decree the said claims of plaintiff in error, and erroneously rejected and dis-allowed the same which error ismanifest upon the record and proceedings in this case.

SECOND.—The said decree of the said Supreme Court of Louisiana was also manifestly erroneous, in this that said Supreme Court held that obedience to the proclamations of the President of the United States, and the proclamation of the military commanders of the United States, made under the acts of Congress which prohibited intercourse between persons in the said parish of Rapides and in the Confederate lines, during the war, and actual hos-

tilities in the years 1862, 1863, 1864 and 1865, and persons residing in New Orleans, Louisiana, within the Union lines, or residents of Texas, by refraining by reason of said proclamations and under said military necessity from bringing suits, was a ground and cause of depriving said plaintiff in error of his said claims and demands against said Walter O. Winn's estate, and of depriving him of his property by enforcing the Louisiana prescription of five years against the said demands.

THIRD.—The said final decree of the Supreme Court of the State of Lonisiana is also manifestly erroneous in this; it ought to have been rendered in his favor and not against him; and it ought to have affirmed the judgment of the district court of said twelfth judicial district in favor of said plaintiff in error.

And the said John O. Mayfield prays that said judgment of said Supreme Court of Louisiana may be reversed and annulled, and that he be restored to all things which ne hath lost by occasion of said judgment.

ARGUMENT.

It does not seem to be necessary to elaborate the point on which plaintiff in error relies.

The third section of the act of the Legislature of 1882, No. 118, page 90, was the law on the subject of the prescription of promissory notes. It is in these words:

"Sec. 3. *Be it further enacted, etc.*, That all promis-
" sory notes, whether the same be negotiable or otherwise,

" shall be precribed by five years." This law has not been changed.

The district judge gave effect to the act of Congress. See Rec. 66, 67 and 80. The Supreme Court of Louisiana on the same facts refused to, give any effect to the act of Congress. The promissory notes fell due November tenth and thirteenth, 1865. Rec. pages 41–45. The proof we have seen shows that they were acknowledged some time in the beginning of January, 1866. *The interval, therefore, as is shown, needed to be deducted from the prescription of five years, is less than two months.* The prohibition of intercourse between the parish of Orleans and city of New Orleans, with the other parts of the State of Louisiana, is shown by the President's proclamation of January 1st, 1863. 12 Statutes at Large, p. 1269, 1st paragraph. Rotchford, Brown & Co., had held the notes in New Orleans during the war. Mayfield was in New Orleans and since the war in Texas.

The Supreme Court of Louisiana in the case of Abby & Catchings vs. Brigham, 28 An. 840, which was very similar to this case, did not hesitate to follow the decision of this high court in the case of Stewart vs. Kahn 493.

Aby & Catching were commission merchants of New Orleans, and had accepted for one Clark, who resided in Mississippi—Brigham was the administrator of Clark, and the suit was brought in the parish of Morehouse. The case was. therefore, directly in point, and it has been seen that the present Supreme Court of Louis.ana has directly overruled the case. Rec. 78, original Transcript, 198.

There cannot be any doubt about what the Supreme Court of Louisiana proposed to do in this case and did; for they quoted the act of Congress, on which the plaintiff in error (Rec. p. 77, original Transcript, 194), and the case of Stewart vs. Kahn, and declared that the act of Congress and the decision could not be regarded as having any influence, or weight in the courts of the State, and denied the power of Congress to legislate on the subject of limitation of actions even during the war.

This they did notwithstanding the said petition for a re-hearing or review, set up and relied on the act of Congress.

Therefore, on the principle settled in the case of Stewart vs. Kahn, 11 Wallace, 493, the Federal question sufficiently appears by the record, and especially by the petition for a re-hearing or review. On the merits of the question the case is, we have said, much stronger than the case of Stewart vs. Kahn, just cited. In that case, Levi, *one* of the defendants, resided in New Orleans, during the whole war. The other two were in the State of Louisiana, outside the Federal lines.

In this case the defendant, Mrs. Winn, now Mrs. Richards, was in Texas during the war. Rec. page 26, 1st paragraph, p. 48. Outside the limits of Louisiana she had no capacity to stand in judgment for the estate. Mayfield, then residing in New Orleans, acquired the notes in the early part of 1866. Hunter, p. 11.

Rotchford, Brown & Co., the holders, until January 1886, of the notes, up to that time, resided and were domiciled in New Orleans, as has been shown. Record, p. 9 Testimony, paragraph page 11. R. H. Hunter.

As to the condition of affairs in the parish of Rapides we again refer to Judge Ryan's statement. Record, pages 9 and 10.

The war ended in Louisiana on the 2d day of April, 1866.

The Protector, 12 Wall. 702.

In the case of Stewart vs. Kahn, 11 Wallace, the writer of this brief urged upon the attention of this high court (in addition to the objections as to the form of raising the Federal question, namely, that the petition for a rehearing was insufficient), the argument that the act of Congress of June 11, 1864, only applied to the courts of the United States, and could not affect the State courts. (11 Wall 497, '98, '99.) This court repelled the argument, and held it error in a State court to refuse to give effect to the act of Congress. "We are of the opinion "that the meaning of the statute is that the time which "elapsed while the plaintiff could not prosecute his suit "by reason of the rebellion, whether before or after the "passage of the act, is to be deducted." 11 Wall. 504, "bottom of page, and 505.

It does not seem to us to be useful to cite other decisions on this subject to this court to establish a proposition so familiar to the court.

See Bird, ex'r, vs. La. State Bank, 93 U. S. 99.

Caperton vs. Bower, 14 Wal. 235.

Hanger vs. Abbot, 6 Wal. 532.

Adger vs. Alston, 15 Wal. 555.

Batesville Institute vs. Kaufman, 18 Wal. 154-5.

Ross vs. Jones, 22 Wal. 576.

Plaintiff in error has used great diligence in the pursuit of his claim. Mrs. Richards, by her continued absence from the State, selling the property, &c., has, so far, baffled all his attempts at recovery.

He respectfully prays that the said judgment and decree of the Supreme Court of the State of Louisiana may be reversed and annulled so far as it respects him, the said plaintiff in error, and that his demand against the estate of Walter O. Winn, deceased, and the representatives of said succession for said forty-five thousand dollars and eight per cent interest thereon from December 10th, 1860, until paid, be judicially recognized and established and properly placed on said provisional account of said J. M. Wells, Jr., executor of the estate of said Walter O. Winn, filed July 5, 1880, as an ordinary creditor. (See Rec. p. 2, and 66 and 67.)

All of which is respectfully submitted by

E. T. MERRICK,

for Plaintiff in Error.

115-137

OFFICE SUPREME COURT U. S.
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APR 4 1885
JAMES H. McKENNEY,
CLERK.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1884.

No. 264.

JOHN S. MAYFIELD, PLAINTIFF IN ERROR,

versus

MARY E. RICHARDS, A. KEENE RICHARDS ET ALS.,
DEFENDANTS IN ERROR.

GUS. A. BREAUX,
Solicitor for Defendants in Error.

MARCH, 1885.

A. W. Hyatt, Print, 73 Camp St N. O—31,490

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1884.

No. 264.

JOHN S. MAYFIELD, PLAINTIFF IN ERROR,

versus

MARY E. RICHARDS, A. KEENE RICHARDS ET ALS., DEFENDANTS IN ERROR.

STATEMENT OF FACTS.

Mary E. Richards was appointed and qualified executrix of the estate of W. O. Winn by the Probate Court of the parish of Rapides.

The estate was indebted to Rotchford, Brown & Co., a firm domiciled in New Orleans, in the sum of $45,000, represented by notes dated March 30th, 1860; four of which, were made payable November 10th, 1860; and five, December 10th, 1860. Record, pp. 41 et seq.

Because, as alleged, the executrix had failed to file an account, as ordered, and because she had disposed of property belonging to the estate, a petition was filed to destitute Mrs. Richards of the executrixship of the succession of Winn. Record, pp. 52–53.

On the 30th September, 1873, a judgment of destitution was rendered, in accordance with the prayer of the petition and the public administrator of the parish was appointed executor.

This executor filed an account of his administration, Record, pp. 1–2, proposing, thereby among other matters, to pay the nine above described notes.

Oppositions were filed by a number of creditors, and by

Mrs. Richards, as universal legatee, pleading in bar of the claim for these notes, the prescription of five years.

The evidence shows, and the Court found, the fact that the acknowledgment made of the notes, though apparently made on the 1st day of November, 1865, was not, in fact, made until January, 1866, after prescription had accrued, when it was no longer in the power of the executrix to make such acknowledgment. J. M. Wells, executor, acknowledged these notes, May 9th, 1876. Rec. p. 41 et seq.

Mayfield's only rights in court, on these notes, if any, are those of Rotchford, Brown & Co., having acquired them, as appears from the say so of Brown, in 1866, after maturity.

Rotchford, Brown & Co., were a New Orleans firm up to the commencement of the war. Rec. p. 11.

Where and what Mr. Brown and the other members of the firm did during the war does not appear, beyond the fact that Mr. Brown was seen in New Orleans by a prisoner of war, possibly as prisoner of war himself. Record, p. 11.

The record fails to show his, or the partner's, domicil during the war: and leaves the Court without information as to their relation to the federal government.

ARGUMENT.

The question presented to the Supreme Court of Louisiana, for decision, was whether the notes held by Mayfield were prescribed.

It was contended that they were not so prescribed, because, the date November 1st, 1865, of their admission by the executrix, was fraudulent and unreal, and could, therefore, give the holder no right.

Now, the Court found, as a fact, that the acknowledgment was false and not made as claimed; that the date of interruption was untrue as alleged, and that the holder of the note had participated by procuring the false date, to perpetrate a fraud upon other creditors and interested parties in the succession: and

upon that state of facts found the law of Louisiana to be, that prescription was not interrupted. This Court, as we understand it, will accept the interpretation put upon the State law by its highest tribunal.

The Court, in effect, assert that from a fraudulent and untrue act, no one can benefit.

Now, Mayfield relied upon this fraudulent and untruthful act of acknowledgment to maintain his pretentions of interruption of prescription until May 9th, 1876, when he procured from Wells, the newly appointed executor of the estate of Winn, an acknowledgment of the notes which he intended as an interruption of prescription.

In the case of succession of Winn, 30 Annual 204, the Court, by its judgment, left the question of prescription of the Mayfield notes open to contest by any interested party.

It will be seen, therefore, that up to this time the decision of the Court does not involve the United States Statute relied on, but on the contrary proceeds entirely and exclusively upon the State law, as applied to a state of facts arising in the case, without reference to the federal statute—for from April, 1866 to May, 1876, prescription had twice accrued on said notes, outside of all computation of the time of war.

But if the federal statute is assumed to be involved, then, the acknowledgment of November 1st, 1865, being decreed null, void and of no effect; the next acknowledgment by the executor being of date May 9th, 1876, (Record, p. 41), then deducting the whole period of the war, prescription had accrued long before the last acknowledgment.

Again, we say that the federal statute relied on has no application to the case at bar.

The purpose of the Act of June 11th, 1864, in relation to the limitation of actions in certain cases, was indubitably to protect the citizens of loyal States who held claims against citizens of States in rebellion: this is voiced in the opinion of this tribunal in Stewart vs. Kahn, 11 Wallace 507, when it says: "It

would be a strange result if those in rebellion, by protracting the conflict, could rid themselves of their debts."

It was a part of the power to guard against the renewal of the conflict, and to remedy the evils which have arisen from its rise and progress.

Kindred with this, and part of the exercise of the same power, were the proclamations of the President of the United States inhibiting all intercourse between States in rebellion and the citizens thereof, and other States of the Union.

A consideration of the language, as well as of the purpose of the act under consideration and of the proclamations, will demonstrate, we think, what we have already said, that its purpose was to protect the citizens of loyal States; that it was not intended to regulate the rights of citizens of a State declared to be in rebellion as between themselves; these were necessarily relegated to the tribunals *de facto*, existing in each of these States, and whose acts have, necessarily, been recognized since the close of hostilities.

No case has been presented, because none exists where the question of the application of the statute in a case arising as between the citizens of a State declared to be in rebellion, and the Court has now to deal with it for the first time.

What reason, what purpose could the Government of the United States have to legislate for the protection of claims, as against each other, of citizens in rebellion? Certainly none greater, nor would it have any more power so to do, than to legislate to regulate the internal affairs of a State in time of profound peace, in a matter outside of the Constitution.

If the Court was right in holding that the federal statute does not apply as between citizens of a State in rebellion, then it rightfully overruled Abby & Catching vs. Brigham, because that was also a controversy between parties in rebellion.

It may be said that Rotchford, Brown & Co. were domiciled in New Orleans, and that Brown was seen in New Orleans by a

prisoner of war; proof shows domicil of the firm only to the commencement of the war, p. 11.

Even when the port of New Orleans was excepted from the effect of the presidential proclamation of April 2d, 1863, the attitude of individuals towards the Government was such that the most stringent military orders were issued; loyalty was required to be evidenced by oaths of the most binding character; many citizens were expulsed, etc.

Upon the evidence in this record, to assume that Brown, or Rotchford, Brown & Co. were loyal citizens of Louisiana, entitled to the protection of the Act of June 11, 1864, is to so assume the fact, in the face of all probabilities to the contrary.

The Mayfield interest evidently deemed it necessary to entitle it to the protection of the federal statute invoked, to show the loyalty of Rotchford, Brown & Co., and the attempt to do so was, by showing Brown's presence in New Orleans, on the one occasion as we have seen: if he or any or all of the partners were loyal, as apparently deemed essential, evidence of the fact could not have been wanting in New Orleans—the absence of the proof is suggestive of the truth.

The Succession of Winn, as has been shown, was opened in Rapides Parish: the absence of the executrix could make no difference as to any proceeding needful to protect the rights of creditors: for, if she absented herself from the State, she (C. C. 1154) was bound to leave a power of attorney with full power to represent her, to an agent; notice of this agency being given by public recordation; or she could be destituted by action of the creditor. That Mayfield resided in Texas after acquiring the notes in 1866, could not change his rights, which at best are only those belonging to Rotchford, Brown & Co.

This was the position and these the rights of citizens of the State at the time. Now, we submit, that the federal law on limitation is inapplicable to these citizens and their rights, as between themselves. The Supreme Court of the State could,

therefore, decide the question of prescription without reference to the federal statute.

Another reason of the application of the federal statute, is said to be that in the States in rebellion there were no federal courts opened to parties to assert their rights: the reason is a cogent one to show that the purposes of the statute was to conserve the rights of citizens of loyal States as against citizens of States in rebellion: but not as between citizens of any one of the latter States—and that it is, therefore, error to claim its application in controversies between these.

The decision in this case as well as that in 30 Annual, 704, Succession of Winn, effectually settle, against Mayfield, his plea of *res adjudicata*, upon the question of prescription, which in any event is not a federal question.

Finally, this Court will not take jurisdiction of this cause because it appears by the affidavit annexed that Mayfield has repeatedly declared since the judgment in his favor that he was absolutely without interest in the controversy.

We do not understand that parties without interest can appear in courts to maintain interests which they disclaim: Courts will not lend their jurisdiction to such purposes: and to prevent abuse of its jurisdiction this Court will consider affidavits *aliunde* the record.

Youngstown Bank vs. Hughes, 104 U. S. 525.

Parker vs. Morrill, 106 U. S. 1.

We respectfully submit, to the Court, that the writ of error should be dismissed because prosecuted by a party without interest in the controversy.

Should, however, the Court deny this, then that the judgment of the Supreme Court of Louisiana shall be affirmed, and we so pray.

GUS. A. BREAUX,
Solicitor for Defendants in Error.

MARCH, 1885.

To the Hon. the Chief Justice, and the Associate Justices of the Supreme Court of the United States:

Mary E. Richards et als., defendants in error in this Court, and opponents in the Courts of Louisiana in the cause aforesaid, respectfully represent:

That from the affidavit annexed, John S. Mayfield is without interest in the controversy, having neither ownership or interest in the notes he claims to represent on the face of the record.

The defendants pray the Court to dismiss the writ of error and the suit, to charge the plaintiff with full costs in this cause.

GUS. A. BREAUX,
Attorney for Defendants in Error.

JOHN S. MAYFIELD, Plaintiff in Error,
vs.
MARY E. RICHARDS, ET ALS., Defendants in Error.
No. 264.
U. S. Supreme Court.

And now the defendants in error, move your Honors, by their undersigned counsel to dismiss this cause for want of jurisdiction, for that John S. Mayfield, is shown by the affidavit annexed to have declared himself since the trial of the cause and the rendition of the judgment to be without interest of any kind therein, that he consequently can have no interest to prosecute this writ of error; and that this Court will not assume to decide the cause, where no interest in any one is exhibited to have the same decided.

COPY OF AFFIDAVIT.

Personally came and appeared before me the undersigned authority, Wilbur F. Blackman, who being duly sworn according to law, deposes and says, that he is a resident of the parish of Rapides, State of Louisiana; that he was the attorney of record for Mrs. Mary E. Richards, on the trial of the opposition to the homologation of the account of the dative testamentary executor, J. Madison Wells, Jr., in the succession of

Walter O. Winn, in the District Court of the parish of Rapides, and also in the Supreme Court of Louisiana, and remained as counsel until he was elected judge of the Twelfth Judicial District of Louisiana, in September, A. D. 1882.

Affiant says that after the trial of the said opposition, and decision thereon by both the District and Supreme Court of Louisiana, he met John S. Mayfield, plaintiff in error, in the City of Alexandria, parish of Rapides, State of Louisiana, and had repeated conversations with him in reference to said litigation.

The said John S. Mayfield, during conversations, stated that he had no interest whatsoever in said litigation, and that he was not the owner of the claims in suit; that he had been furnished the money, by the attorney of the heirs of either Sheppard or Brown, to buy said notice or claims for them, which he did at public auction. That he said John S. Mayfield had long since transferred the same to them before the trial of the cause in the District Court of the State. To him I proposed a compromise for my client, Mrs. M. E. Richards, he the said John S. Mayfield, declared that he had no control over said claims or litigation and was not the true owner, and therefore could entertain no proposition whatever in reference to a compromise. Affiant further deposes and says, that during these conversations with the said John S. Mayfield, at different times and after there had been an appeal to the Supreme Court of the United States, he distinctly stated and acknowledged that he was not the owner of the claims in controversy, that the same belonged then, and had in reality and truth belonged to other persons all the while. Affiant further deposes that he had no knowledge whatever of these facts in or during the trial of the cause, either in the District or Supreme Court of Louisiana, and is satisfied that Mrs. Mary E Richards, who has been a resident of Bardstown, State of Kentucky, for a number of years previous to the trial of said opposition, had no knowledge whatever of said facts.

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CLERK

No. 264.

Supreme Court of the United States,

OCTOBER TERM.

JOHN S. MAYFIELD, PLAINTIFF IN ERROR,

versus

MARY S. RICHARDS, A. KEENE RICHARDS ET AL., DEFENDANTS IN ERROR.

Reply to Brief of Defendants in Error.

I.

We feel constrained to take issue with our learned adversaries on what they say the Supreme Court of Louisiana decided. We think it is much safer to look to the pleadings and the decision itself.

THE ISSUE TENDERED by Mrs. Richards was "that the "notes placed" (on the executor's account) "were pres- "cribed at the date they were accepted by the executrix, "the date of the acceptance being written on the back of "the notes long before they were accepted by the ex- "ecutrix and accepted *in error*. The prescription of "five years she specially pleads as a bar to said "claim." Rec. p. 6.

Dubois set up the same and also prescription of ten years. There was no allegation or pretence of fraud pleaded, for the parties knew that Mrs. Richards was acting under the advice of her lawyer, who went to New Orleans while she was there, and who saw the endorsements. Richard Ryan, p. 9.

II.

No one can doubt that it was a *duty* of the executrix to acknowledgement the notes as debts of the estate if they were not prescribed. Nor can the validity of such acknowledgment, when made, be questioned.

But the Supreme Court of Louisiana said that the act of congress of June 11th, 1864, was without force in the State courts, and that therefore the acknowledgment of the debt by the executrix was wrong. The whole case, therefore, turned, not only by the pleadings and the evidence, but by the findings and decree of the lower court on the force of tne act of congress. *After the District Judge had admitted proof to show that the notes were not acknowledged until January, 1866, and the impossibility of sueing in Rapides, he could not have rendered judgment in favor of the plaintiff in error as he did* without giving effect to the act of congress.

And the State Supreme Court, conceding substantially the finding of the fact by the district court, said that the district court erred, because it held that the act of congress did relate to the State courts and should be applied by them.

And the very question here is whether the Supreme Court of Louisiana erred in thus ruling in the last re-

sort and thereby depriving the plaintiff in error of his rights.

The domicile of R~~ichard~~ Stelhford Brown & Co. being New Orleans, where one of the firm was last seen during the war, and, there being no proof to the contrary, it is rather a late day to say, before this court, that their domicil was some where else.

Besides, we think if they had even lived in Alexandria, the act of congress would still have protected them, for there was not only the "interruption of the ordinary course of judicial proceedings" occasioned by the war, but there was an absolute interruption of legal proceedings from May, 1864, to July, 1865. There was no court nor officers. (Rec. p. 10.) And Mrs. Winn, the executrix, was during all this time in Texas a refugee. Rec. pp. 26, 9.

The act of congress covers the case in whatever light it be viewed. We leave this part of the case on our original brief, pages 20 to 22.

III.

There was, as we have seen, no other question of prescription made by Mrs. Richards, or urged to the court, save the sole prescription of five years from the maturity of the note in November, 1860, to January, 1866.

It would have been idle to have made any other issue.

1st. The debt was acknowledged January, 1866, and suit was brought within the five years, viz: 18th May 1870, which interrupted prescription until five years after,

November, 1875. Rec. p. 49-52. Succession of Winn, 27 Ann. 688, 689. In the case cited by defendants in error, in 30 Annual, in which the Supreme Court of Louisiana expressed the opinion that the acknowledgment of the two executors of the promissory notes were valid, also interrupted prescription. Succession of Winn, 30 A. 704.

If there had been any necessity for it, the citation would have interrupted prescription from May 18th, 1870, so long as that suit lasted, and it was for the defendants to show (if they relied on such defence) that it terminated some time before November, 1875, or May, 1876. Andrews vs. Rhodes, 10 Rob. 53; Barrow vs. Shields, 13 A. 57; Sorel vs. Laurent, 27 A. 70. And the new executor acknowledged the debts, as endorsed on each note, on the 9th of May, 1876.

On the 5th of July, 1880, the account was filed and this litigation commenced *de novo*. Rec. p. 2. So, it is easily seen that on defendants' own view of the law, the claim has been kept alive by active and persistent suit.

2d. *No other acknowledgment* than that of Mrs. Richards, executrix, in 1866, *was needed* to keep the debt alive, as long as the estate is under administration. No suit or other proceeding was required to prevent prescription.

Renshaw vs. Stafford, 30 A. 852, 856.
Cloutier vs. Lemee, 33 A. 308.
Succession of Romero, 29 A. 493.
Porter vs. Hornsby, 32 A. 337.

It is thus quite apparent from this view also that there could have been no other question of prescription in the case than that pleaded by Mrs. Richards in her opposition and considered by the District and Supreme Courts.

IV.

We have suddenly been confronted with a new issue of fact proposed to be made by our adversaries and to be tried *ex parte* the moment we submit our case.

This court is asked, as a court of law, to examine an *ex parte* affidavit of a lawyer in the case, who says he heard the plaintiff say something, and on that hearsay evidence this court is expected to find a verdict to the effect that the plaintiff was not the owner of his notes when he obtained judgment in the district court.

It would be very convenient for the defendant in many cases to have them decided on hearsay and *ex parte*. There would then be no pleadings needed, and the trouble of cross-examination would be done away with and a trump card might always be reserved for the Supreme Court.

The service on us of the notice of the motion to be made comes so late that we could not in the probable brief delay put in counter-affidavits if our client, who lives remote from us, could be reached in time.

We are his counsel and our instructions to prosecute this writ of error have not been countermanded.

We deny the right of the defendant, who is without equity and has never paid a cent, to question our right in this court.

Mrs. Richards' former lawyer, in his *ex parte* affidavit, says in an attempt made by him to compromise the suit, Maysfield said he had been furnished the money by others to buy the notes; that he had transferred the same to them before trial in the district court; that he had no control over them, and therefore could not entertain a proposition to compromise.

How this weakest of all testimony (conversations with a party under an attempt to compromise) would appear on cross-examination, we are only allowed to surmise.

But if the matters affirmed in the affidavit had been pleaded, it would have been no defence to the action in Louisiana.

As the Louisiana judgment is *res judicata* on the notes, it is no concern of the defendant how the plaintiff distributes the money when he gets it, nor what are his contracts with others. It is enough that he is still the legal holder of the notes.

She does not pretend that any one else against whom she has a setoff, or any other equity, is owner. Her sole defence *in the record* is that prescription ran, while the war raged, in Alexandria, and she was out of the State and therefore she is not bound to pay.

If Mrs. Richards had made the issue and set up the affidavit in her pleadings in the lower court, *proof of her allegations would not have been received*

In Banks vs. Eastin, decided in 1825, 3 N. S., page 291, the Supreme Court of Louisiana said:

"The blank endorsement makes a bill transferable " by the endorser, and every subsequent holder by " mere delivery, and so long as the endorsement con- " tinues in blank it makes the bill or note payable to " bearer. It appears to us, therefore, that whether the " plaintiff was owner of the note sued on or not, was a " question with which *the defendant had nothing to do*, " for, by virtue of the blank endorsement, the holder " was entitled to recover from the defendant, if not as " real owner, *at least as trustee for the person having* " *the real interest.* There are exceptions to the general " rule where the defendant has equitable grounds of " defence," etc. * * * "But where no such alle- " gations are made the holder of the note is entitled to " recover and the judgment in his favor will form *res* " *judicata* against any other person claiming an inter- " est in the bill. For the endorsement in blank makes " the note payable to bearer." 3 N. S. 291, 292.

This doctrine has been often reaffirmed, and is the settled law. See Shaw vs. Thompson, 3 N. S. 392.

In a similar case, Findley vs. Breedlove, 4 N. S. 107, the Supreme Court said: "Whether there be or " not other persons who have an equitable interest to " the proceeds *is a question with which the defendant* " *has nothing to do, unless the assignment is made to* " *deprive him of a defence which he would have had* " *against the person who transferred it.*" See, also,

Lacoste vs. DeArmas, 2 L. R. 263.

West vs. Wilson, 4 L. R. 220.

Newton vs. Turner, 5 L. R. 48.

McKinney vs. Beeson's Estate, 14 L. R. 254.

The case of Peyroux vs. Davis, 17 L. R. 481, is also directly in point.

Mitaire vs. Ferguson, 18 L. R. 92.

Bacon vs. Smith, 2 Ann. 441.

Connery vs. Harrison, 4 Ann. 350.

Succession of Gilmore, 12 Ann. 564.

V.

We do not set up or claim the judgment rendered in November, 1875 (29 Ann. 689) to be *res judicata*, as the opposite counsel seem to suppose. Such plea is entirely unnecessary to our case.

By the President's proclamation of January 1, 1863, the parish of Orleans and city of New Orleans, with a few adjacent parishes, were declared not to be in rebellion. 12 Stat. at Large, p. 1269. The citizens of New Orleans then stood in the same relation to the Confederacy as citizens of New York, and we do claim that prescription did not run against Rotchford, Brown & Co. or Mayfield during the war, and that the act of congress of June 11th, 1864 prevented prescription from becoming a bar to our action.

VI.

Lastly, it is contended that the act of congress could not protect the citizens of New Orleans, although they were expressly prohibited by law and the President's proclamation from having intercourse with the other

portions of the State of Louisiana held by the Confederate forces. The act of congress makes no such distinction, as defendants' counsel seek to draw. 18 W. 152; 22 W. 576.

We respectfully submit that the decree of the Supreme Court of Louisiana ought to be reversed and one rendered in favor of the plaintiff in error.

All of which is respectfully submitted by

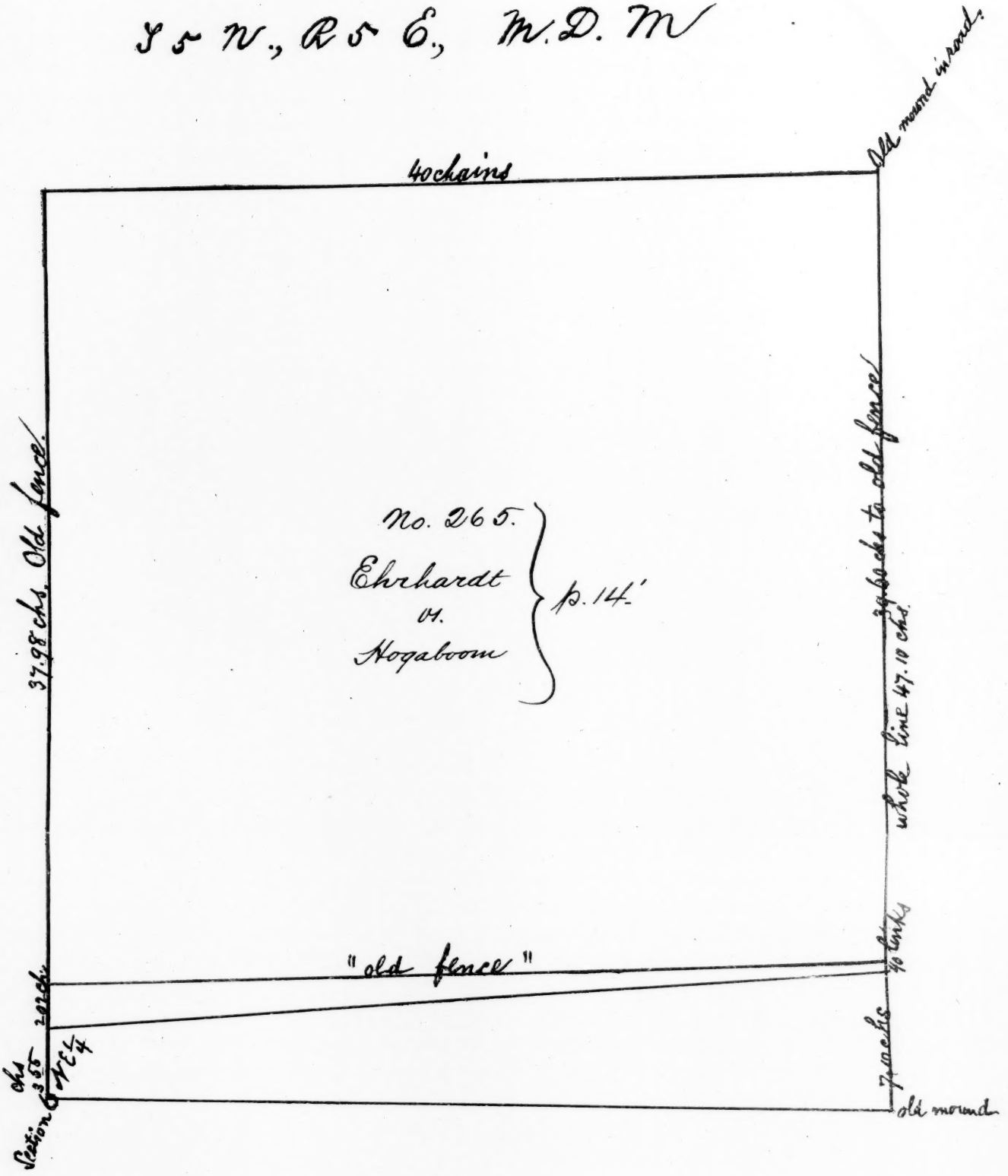
E. T. MERRICK.

For Plaintiff

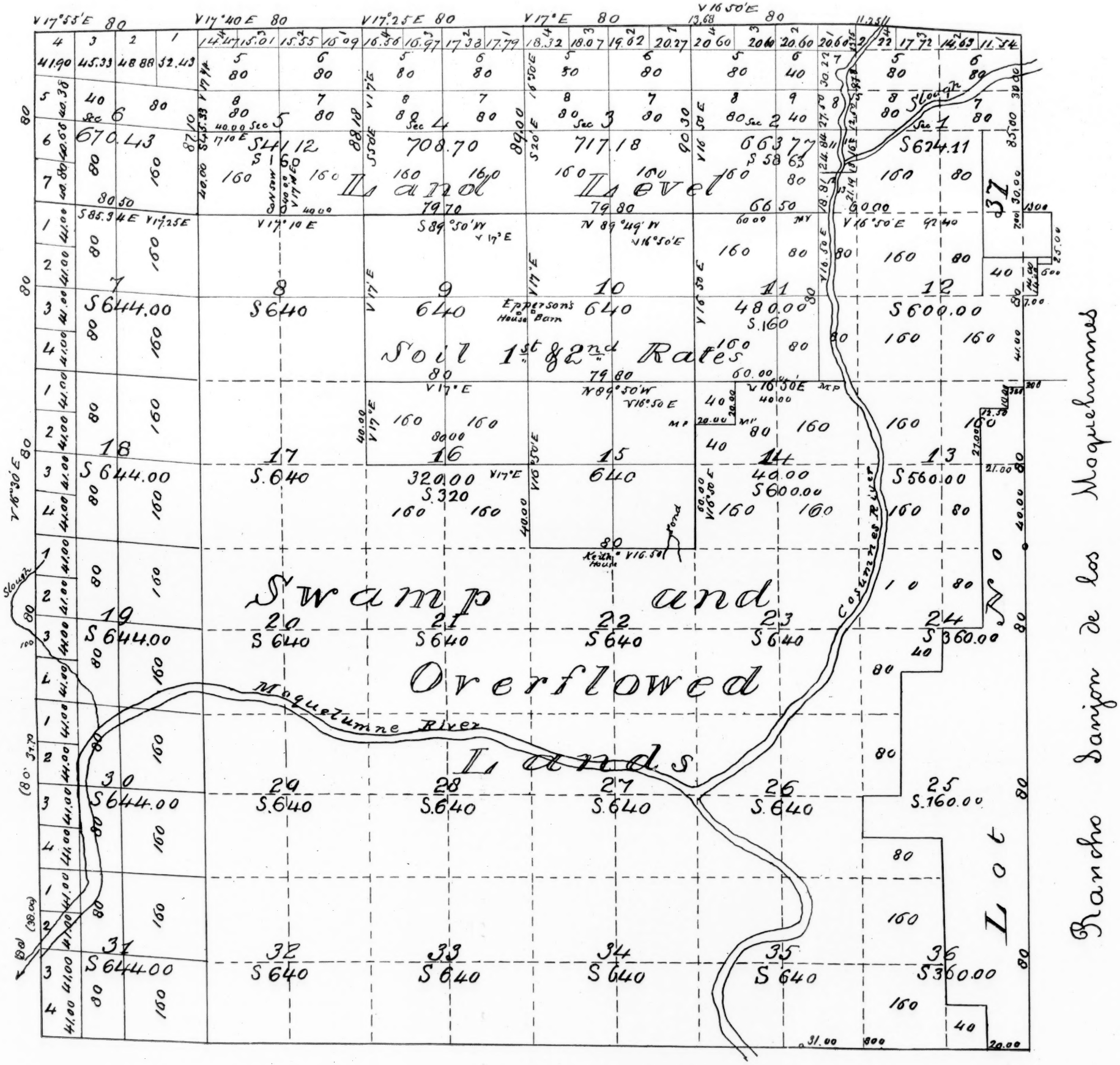
Widening of Twelfth Street
Scale 120 feet to inch
No 1476 of 1901
The U.P. Ry Co.
vs.
The City of Kansas
p. 15.
Certified that the foregoing statement by map, does state fairly & is a correct description of the parcels of land taken and of the parcels deemed benefited and to be assessed, in the matter of the proceeding for compensation in accordance with Ordinance No. 10,473 approved April 22, 1890 - And also contains the names of all persons owning or claiming such parcels or of any interest therein, with their addresses.
(Signed) John Brennan, City Engineer.
Kansas
Pacific
Rail
Road
Company
K.C. Elevator Co
Hudson E. Bridge
Alice Armstrong - John Armstrong
Margaret Manning - George Manning
TWELFTH ST.
STATE ST
Bell St.
Tennessee St.
Wyoming St.
Eleventh Street
Tenth Street
Twelfth Street
Thirteenth Street
Santa Fe
Hickory St.
Locust St.
BAR ASSOCIATION

A

T 5 N., R 5 E., M. D. M

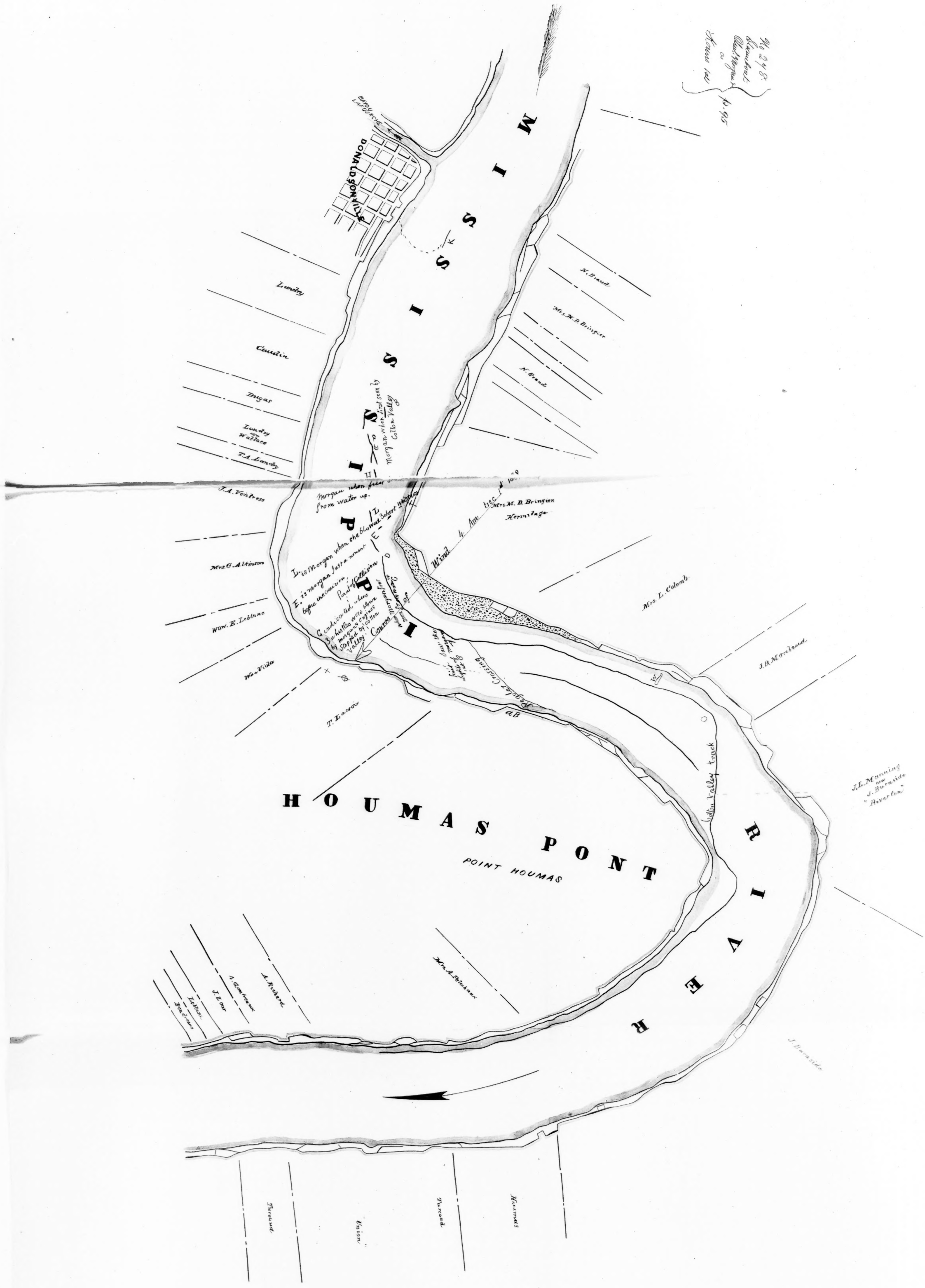

40 chains
Old mound in road.
37.98 chs. Old fence.
No. 265.
Ehrhardt
vs.
Hogaboom
p. 14.
39.60 chs. to old fence
whole line 47.10 chs.
"old fence"
40 links
7 links
old mound
Station
Old
3.55
NE 1/4
20 chs.

Township 5 North Range 5 East Mt Diablo Meridian.



Meanders of Cosumnes River		
Sec	Course	Distance
2	S 29¾ W	6.00
	" 50 "	3. "
	" 84¼ "	5. "
	" 7¾ "	4. "
	" 57 E	5. "
	" 2½ W	4. "
	" 24¼ E	5. "
	" 16 W	12 "
	" 20¼ E	5 .
	" 16¼ W	10. "
	" 14¼ E	6.80
	" 39½ W	3.00
	" 7 "	11. "
	" 17½ "	7. "
	" 25¾ "	2.70
		89.50
		= 1 mile 9 chs 50 lks

No. 265.
Ehrhardt
vs.
Mogaboom
p. 142


No 2 1/2 S.
Steamboat
Wm. Morgan
at
Kraus Ind
No 95
MISSISSIPPI
DONALDSONVILLE
BAYOU LAFOURCHE
Lundy
Claudin
Drugas
Lundy
now
Wallace
T.A. Landry
J.A. Veintress
Mrs. O. Atkinson
Wm. E. Leblanc
Wm Viola
T. Lacour
N. Braud
Mrs. M. D. Bringier
N. Braud
Mrs. M. D. Bringier
Heirs Page
Mrs. L. Colomb
J.B. Morehaud
Regular Crossing
Wind 4 Am. Dec.
Morgan when first seen by Colon Valley
Morgan when first seen by Colon Valley
Morgan when first seen by Colon Valley
Morgan when first seen by Colon Valley
Morgan when she blowed 2 short blasts
Morgan when she blowed
Morgan Just a moment
before encounter
Point of Collision
Encountered in two
Minutes from first sight
Steamers were blown
by Morgan engines
Stopped by cotton
Valley Coming
Colon Valley track
HOUMAS POINT
POINT HOUMAS
RIVER
Mrs. A. Pitchaux
A. Richard
A. Gautreaux
J.L. Guy
Leblanc
Boudreaux
J.L. Manning
now
J. Burnside
"Averlon"
J. Burnside
Houmas
Bureau
Union
Bureau

J. B. Clark.

Making Carriage Thill-Couplings.

No. 66,130. Patented Jun. 25, 1867.

Fig. 1.

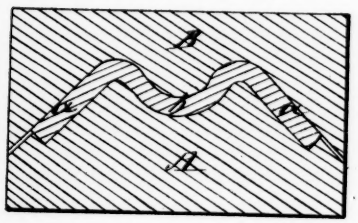
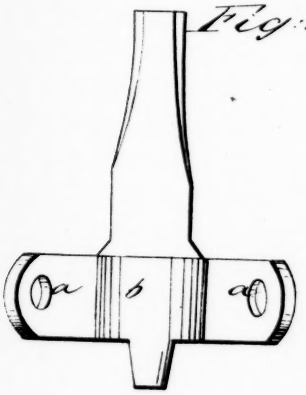


Fig. 2.



Witnesses

E. Ellsworth

A. M. Tanner

Inventor

Jas. B. Clark

Per Munn

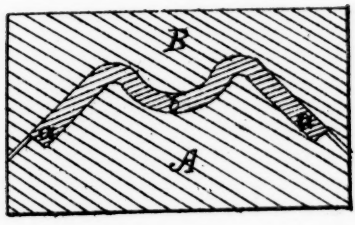
Attys

J. B. Clark.

Making Carriage Thill Couplings

No. 66,130 Patented Jun. 25. 1867

Fig. 1.



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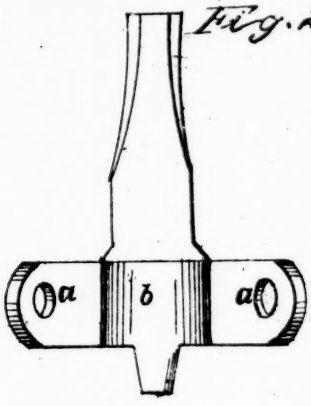


Witnesses

E. Ellsworth

A. M. Tanner

Inventor

Jas. B. Clark

Per Munn & Co

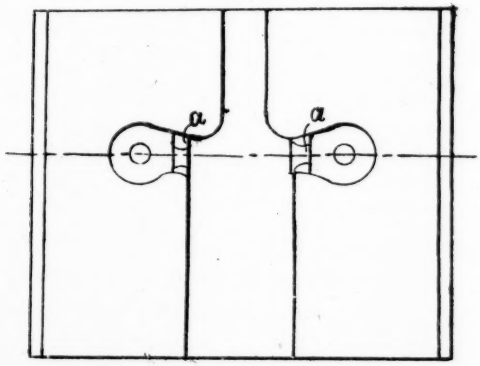
Attorneys

J. P Thorp

Making Carriage Countings

No. 28.114. Patented May 1 1860.

Fig. 1.



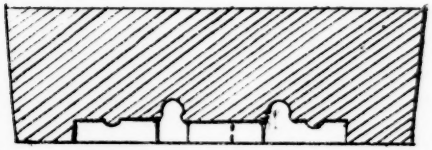


Fig. 3.

Fig. 2.

Fig 4

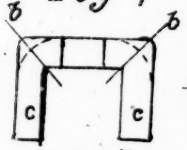
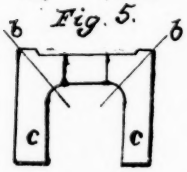
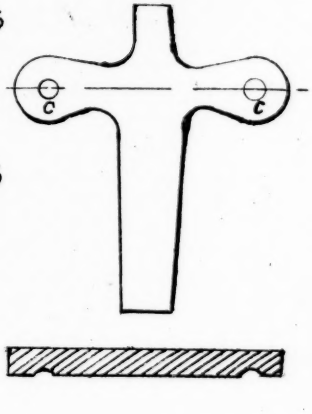
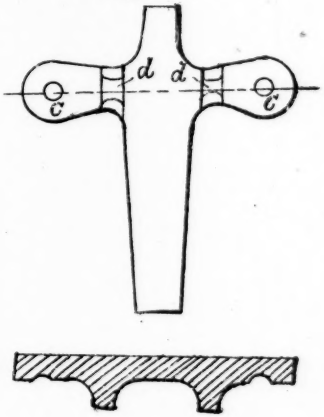


Fig. 5.







Witnesses
Edmd C Bliss
Jenny W Bey

Inventor
James P Thorp

L. Burns,

Making Carriage-Couplings

No. 65,641. Patented June. 11 1867

Fig. 2.

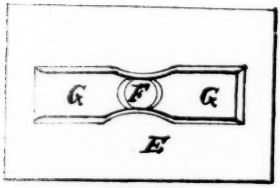


Fig. 1.

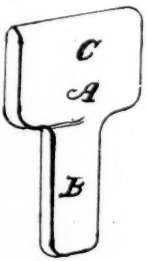


Fig 5

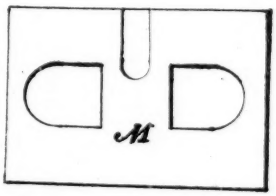
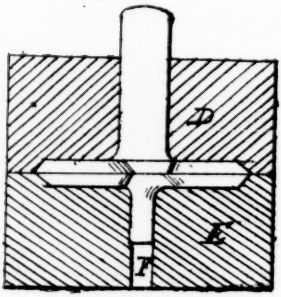


Fig 4.



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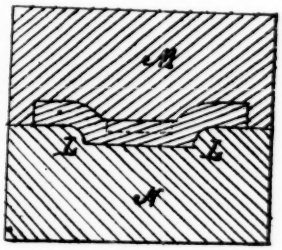


Fig 3

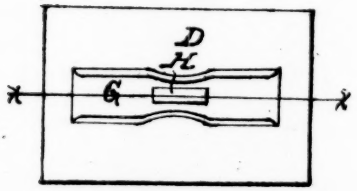
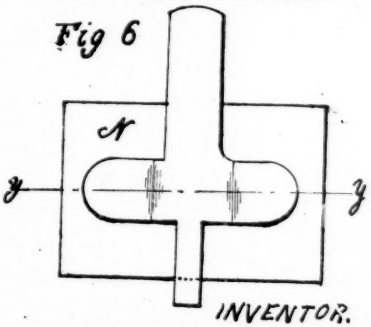


Fig 6



WITNESSES

Theo Tusche

J. Adervice

INVENTOR.

L. Burns

per Munn & Co

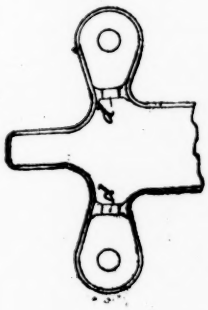
Attorneys

J. P. Thorp,

Making Carriage Couplings

No. 2,362. Reissued Sept. 18. 1866.

Fig. 1.



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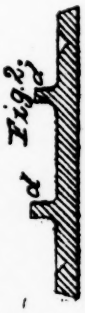

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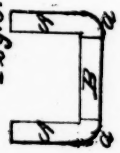

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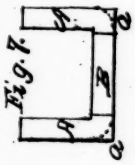

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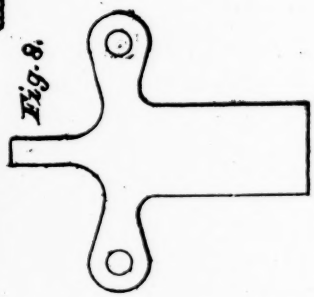

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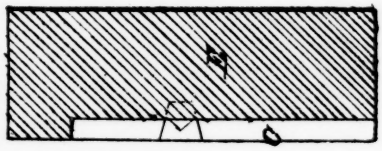

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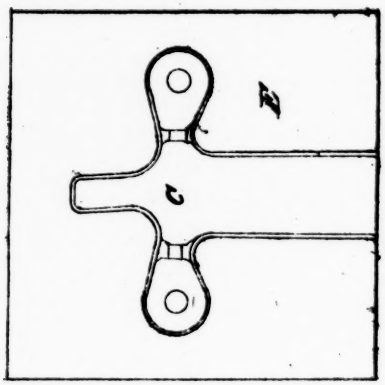

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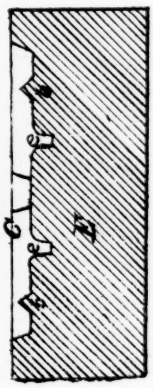


WITNESSES

Samuel A. Pepper

George Andrews

W B Smith.

Making Carriage Shackle-Blanks

No. 106,225. Patented Aug. 9. 1870.

Fig. 1

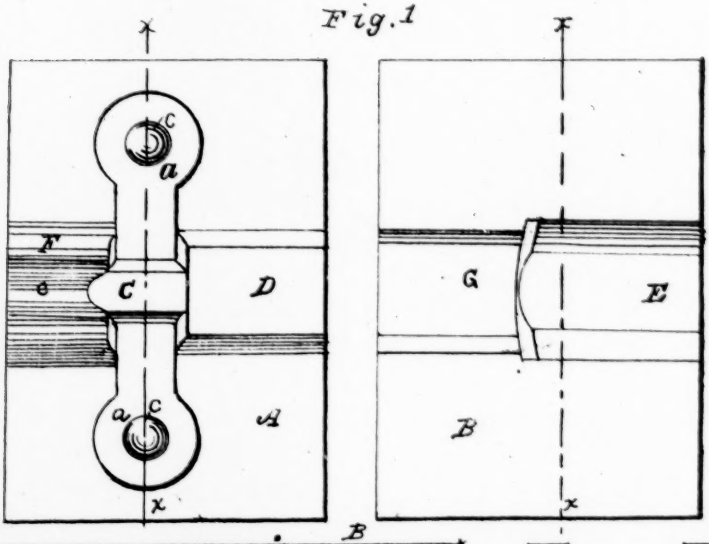
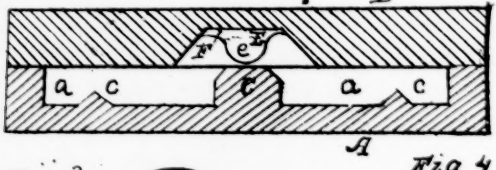


Fig 2.



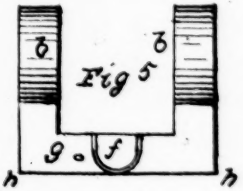


Fig 3.

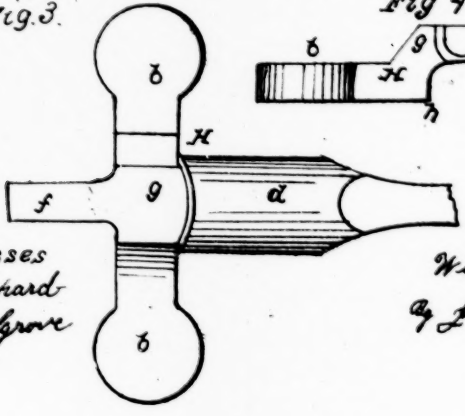
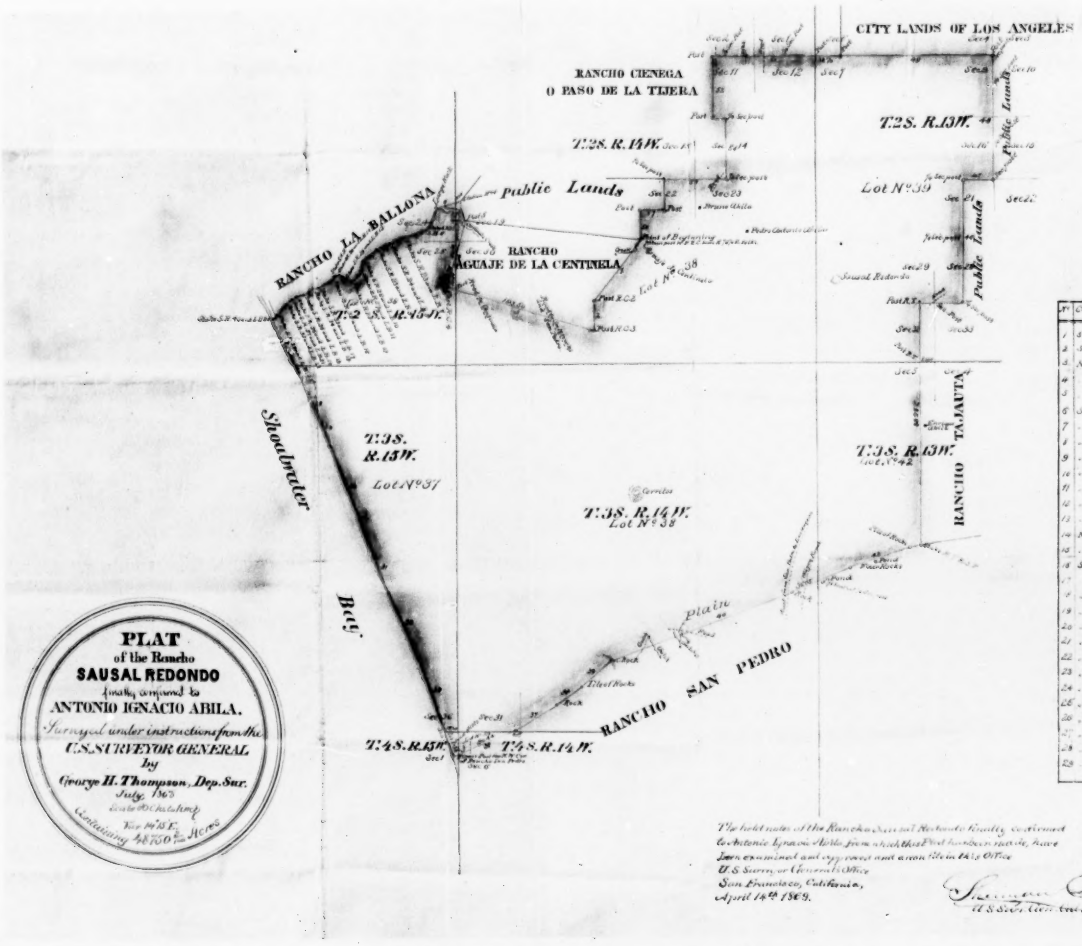


Fig 4

Witnesses
C A Shepard
Geo. Colgrove

Inventor
Willis B Smith
by James Shepard Atty.



PLAT
of the Rancho
SAUSAL REDONDO
finally confirmed to
ANTONIO IGNACIO ABILA.
Surveyed under instructions from the
U.S. SURVEYOR GENERAL
by
George H. Thompson, Dep. Sur.
July 1863
Scale 80 Chs to the inch
Variation 16°15' E.
Containing 48750 Acres

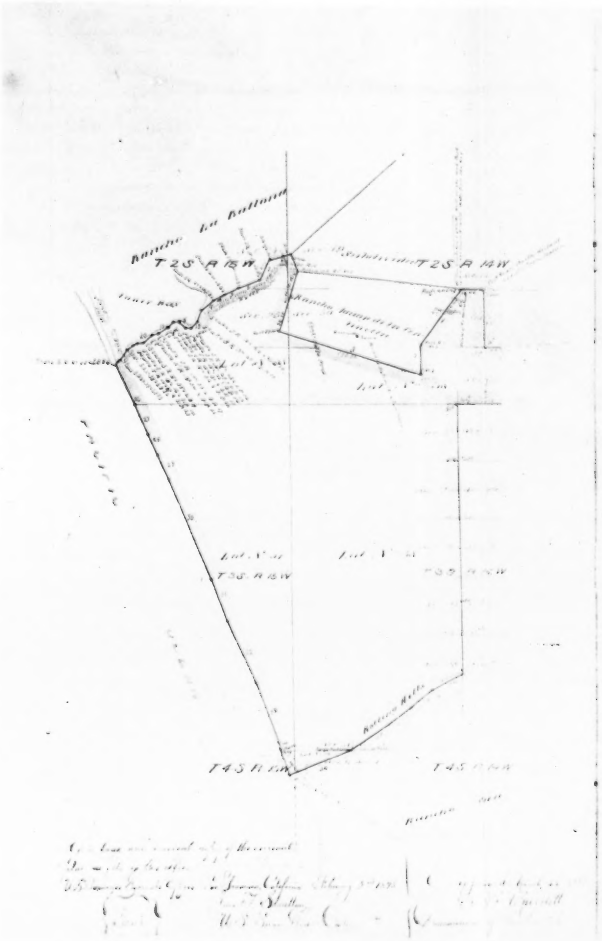
Boundaries

Nº	Course	Distance	Nº	Course	Distance
1	S 36½ W	99.00	20	S 29 W	149.00
2	South	44.00	21	" 22 "	64.00
3	N 79½ W	246.00	22	" 24½ "	93.00
4	10½ "	51.38	23	" 18½ "	31.00
5	12½ W	27.62	24	" 15 "	8.00
6	S 76½ "	34.00	25	" 21½ "	37.50
7	24½ "	34.00	26	N 89½ "	41.00
8	72½ "	38.00	27	" 58½ "	64.00
9	68½ "	19.62	28	" 53½ "	42.00
10	64½ "	19.50	29	" 58½ "	31.00
11	54½ "	23.00	30	" 69 "	20.00
12	37½ "	17.00	31	" 67½ "	24.00
13	53 "	17.33	32	" 71½ "	15.00
14	N 81 "	6.00	33	" 87 "	16.00
15	58½ "	14.50	34	North	374.00
16	S 73 "	8.00	35	East	60.00
17	53 "	8.00	36	North	100.00
18	60½ "	21.00	37	East	396.00
19	82 "	7.00	38	North	181.00
20	52 "	15.00	39	West	230.00
21	52 "	14.00	40	South	7.00
22	63½ "	9.00	41	West	108.00
23	50½ "	8.00	42	South	30.00
24	43½ "	19.50	43	East	15.00
25	45½ "	9.21	44	South	60.00
26	27 E	55.00	45	West	60.00
27	26 "	42.00	46	South	60.00
28	23 "	31.00	47	West	31.50
29	23½ "	55.00	48	South	37.50

The field notes of the Rancho Sausal Redondo finally confirmed to Antonio Ignacio Abila from which this Plat has been made, have been examined and approved and a copy filed in this Office

U.S. Surveyor General's Office
San Francisco, California,
April 14th 1869.

Surveyor Gen'l
U.S. Surveyor General


Rancho La Ballona
T2S R15W
T2S R14W
T3S R15W
T3S R14W
T4S R15W
T4S R14W